336.2
M583a
1923

STATE OF MICHIGAN

GENERAL TAX LAW

OF

1893 AS AMENDED

EDITION OF 1923

ANNOTATIONS AND CITATIONS FROM MICHIGAN REPORTS, OTHER
SOURCES, REFERENCES TO STATUTES AFFECTING THE
ADMINISTRATION OF THE TAX LAW AND LAWS
RELATIVE TO TAXATION THAT ARE NOT
A PART OF THE GENERAL TAX LAW

COMPILED AND PUBLISHED UNDER THE SUPERVISION OF
ORAMEL B. FULLER, AUDITOR GENERAL

GEORGE L. HAUSER, DEPUTY AUDITOR GENERAL,
AND
MABEL COLGROVE STEBBINS, Compilers

A.D. MDCCCXXXV.

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PREFATORY.

This issue of the General Tax Law as amended is intended to include excerpts from all Michigan Supreme Court decisions that relate thereto or to similar provisions in the enactments that preceded it; reference to the principal statutes that are to be considered by assessing and collecting officers, including a synopsis of the provisions of general acts governing cities of the fourth class and villages, and of the school, drain and highway laws; extracts from some of the more directly applicable writings on taxation, a table of cases, authorities and statutes referred to herein, and some practical notes that may assist those who are charged with the execution of the law.

All references to sections of the General Tax Law refer to the notes to the sections as well as to the sections themselves, and may be intended to refer to either or both.

Cases having a direct bearing on the general laws or the particular statutes referred to herein, but not applicable to any question liable to arise under the general tax law, are not included herein. On the other hand many cases are cited that are not tax cases, but some enunciation therein has direct bearing on the general tax law.

In considering decisions quoted herein it will be remembered that they have been rendered under successive tax laws, and many which will very generally be recognized as affecting the principles involved in the present law should not be considered as having direct and complete application to the sections where they are found. The earlier decisions held taxes and sales void for many irregularities that would void neither taxes nor sales under the policy of the present law; yet these same irregularities, if practiced now, might and frequently do occasion expensive litigation and the elimination of a very considerable part of the taxes assessed, either on the hearing of the Auditor General's petition for decree of sale, or in actions brought earlier. For this reason, while it should not be considered that tax sales under the present law can be set aside for defects or irregularities that do not prejudice property rights, yet it is as important that the letter and spirit of the law should be carefully observed as it was when every minor departure from the exact performance of the letter of the law might be made the subject of contest, even years after the sale of the land.

All objections other than those that are jurisdictional are now foreclosed by the decree, and decisions holding otherwise will be found to have been rendered under laws in force prior to those of 1889 and 1893. This should be remembered in

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considering the cases quoted or referred to, and that non-jurisdictional objections cannot now be raised successfully after decree.

The numbers in parenthesis ( ) refer to sections in Compiled Laws of 1915.

The cases cited include the 224th Michigan report and include all cases decided prior to January 1st, 1924.

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TABLE OF CASES, AUTHORITIES AND STATUTES

TABLE OF CASES, AUTHORITIES AND STATUTES

Act 206 of 1893, approved June 1, 1893, was ordered to take effect June 12, 1893.

The original act contained 137 sections.

Sections added, amended, repealed and when in effect.

Section.	Act.	Year.	In effect.	
7 Amended	44	1901	Sept. 5, 1901	
7 Amended	309	1909	Sept. 1, 1909	
7 Amended	174	1911	Aug. 1, 1911	
7 Amended	331	1919	Aug. 14, 1919	
8 Amended	8	1917	Aug. 10, 1917	
8 Amended	297	1921	Aug. 18, 1921	
9 Amended	25	1895	Mar. 20, 1895	Im. effect.
9 Amended	309	1909	Sept. 1, 1909	
9 Amended	297	1921	Aug. 18, 1921	
11 Amended	229	1895	May 31, 1895	Im. effect.
11 Amended	235	1903	Sept. 17, 1903	
14 Amended	32	1899	April 8, 1899	Im. effect.
14 Amended	129	1907	Sept. 28, 1907	
14 Amended	182	1911	Aug. 1, 1911	
14 Amended	163	1923	Aug. 30, 1923	
15 Amended	214	1921	Aug. 18, 1921	
18 Amended	239	1899	Sept. 23, 1899	
21 Amended	154	1899	June 23, 1899	Im. effect.
22 Amended	154	1899	June 23, 1899	Im. effect.
24 Amended	262	1899	Sept. 23, 1899	
24 Amended	326	1907	Sept. 28, 1907	
25 Amended	131	1915	Aug. 24, 1915	
28 Amended	129	1901	Sept. 5, 1901	
29 Amended	326	1907	Sept. 28, 1907	
30 Amended	326	1907	Sept. 28, 1907	
34 Amended	292	1909	Sept. 1, 1909	
34 Amended	201	1913	Aug. 14, 1913	
34 Amended	380	1921	Aug. 18, 1921	
35 Amended	5	1915	Aug. 24, 1915	
37 Amended	292	1909	Sept. 1, 1909	
37 Amended	201	1913	Aug. 14, 1913	
37a Added	201	1913	Aug. 14, 1913	
41 Amended	262	1899	Sept. 23, 1899	
42 Amended	261	1897	Aug. 30, 1897	
43 Amended	28	1903	Sept. 17, 1903	
43 Amended	156	1911	Aug. 1, 1911	
43a Added,	1	1917	Aug. 10, 1917	
44 Amended	187	1915	Aug. 24, 1915	
44a Added	187	1915	Aug. 24, 1915	
47 Amended	229	1895	May 31, 1895	Im. effect.
47 Amended	215	1899	Sept. 23, 1899	
53 Amended	130	1901	Sept. 5, 1901	
53 Amended	76	1913	Aug. 14, 1913	
54 Amended	225	1897	May 29, 1897	Im. effect.
54 Amended	193	1901	Sept. 5, 1901	

Section.	Act.	Year.	In effect.	
57 Amended	225	1897	May 29, 1897	Im. effect.
58 Amended	213	1905	Sept. 16, 1905	
58 Amended	76	1913	Aug. 14, 1913	
58 Amended	320	1917	Aug. 10, 1917	
59 Amended	262	1899	Sept. 23, 1899	
59 Amended	129	1921	Aug. 18, 1921	
61 Amended	225	1897	May 29, 1897	Im. effect.
61 Amended	262	1899	Sept. 23, 1899	
61a Added	234	1905	Sept. 16, 1905	
61a Amended	52	1913	Aug. 14, 1913	
62 Amended	154	1895	Aug. 30, 1895	
62 Amended	225	1897	May 29, 1897	Im. effect.
62 Amended	262	1899	Sept. 23, 1899	
63 Amended	225	1897	May 29, 1897	Im. effect.
65 Amended	72	1913	Aug. 14, 1913	
65 Amended	56	1921	Aug. 18, 1921	
66 Amended	162	1895	Aug. 30, 1895	
66 Amended	31	1 99	April 6, 1899	Im. effect.
66 Amended	264	1899	Sept. 23, 1899	
67 Amended	262	1899	Sept. 23, 1899	
70 Amended	225	1897	May 29, 1897	Im. effect.
70 Amended	262	1899	Sept. 23, 1899	
71 Amended	154	1895	Aug. 30, 1895	
71 Amended	225	1897	May 29, 1897	Im. effect.
73 Amended	154	1895	Aug. 30, 1895	
73 Amended	262	1899	Sept. 23, 1899	
73a Added	58	1907	Sept. 28, 1907	
74 Amended	154	1895	Aug. 30, 1895	
74 Amended	225	1897	May 29, 1897	Im. effect.
74 Amended	262	1899	Sept. 23, 1899	
74 Amended	320	1917	Aug. 10, 1917	
78 Amended	225	1897	May 29, 1897	Im. effect.
78 Amended	262	1899	Sept. 23, 1899	
79 Amended	225	1897	May 29, 1897	Im. effect.
79 Amended	28	1919	Aug. 14, 1919	
81 Amended	34	1907	April 3, 1907	Im. effect.
82 Amended	34	1907	April 5, 1907	Im. effect.
84 Amended	154	1895	Aug. 30, 1895	
84 Amended	262	1899	Sept. 23, 1899	
84 Amended	4	1915	Aug. 24, 1915	
87 Amended	154	1895	Aug. 30, 1895	
87 Amended	224	1897	Aug. 30, 1897	
87 Amended	83	1899	May 25, 1899	Im. effect.
89 Amended	262	1899	Sept. 23, 1899	
89 Amended	129	1921	Aug. 18, 1921	
93 Repealed	263	1921	Aug. 18, 1921	
94 Repealed	263	1921	Aug. 18, 1921	
98 Amended	154	1895	Aug. 30, 1895	
98 Amended	262	1899	Sept. 23, 1899	
98 Amended	80	1903	Sept. 17, 1903	
98a Added	212	1905	Sept. 16, 1905	
98a Amended	19	1909	Sept. 1, 1909	
102 Amended	262	1899	Sept. 23, 1899	
106 Amended	154	1895	Aug. 30, 1895	
108 Amended	206	1897	Aug. 30, 1897	
111 Amended	214	1897	Aug. 30, 1897	
113 Amended	154	1895	Aug. 30, 1895	
120 Amended	154	1895	Aug. 30, 1895	

Section.	Act.	Year.	In effect.	
120 Amended	163	1923	Aug. 30, 1923	
122 Amended	33	1913	Aug. 14, 1913	
124 Amended	154	1895	Aug. 30, 1895	
127 Amended	154	1895	Aug. 30, 1895	
127 Amended	107	1899	June 8, 1899	Im. effect.
127 Amended	84	1903	Sept. 17, 1903	
127a Added	302	1917	Aug. 10, 1917	
128 Amended	107	1899	June 8, 1899	Im. effect.
130 Amended	107	1899	June 8, 1899	Im. effect.
130a Added	277	1923	Aug. 30, 1923	
130b Added	277	1923	Aug. 30, 1923	
131 Amended	240	1897	Aug. 30, 1897	
131 Amended	107	1899	June 8, 1899	Im. effect.
131 Amended	141	1901	May 17, 1901	Im. effect.
131 Amended	208	1915	Aug. 24, 1915	
133 Amended	107	1899	June 8, 1899	Im. effect.
133 Amended	39	1901	April 4, 1901	Im. effect.
135 Amended	154	1895	Aug. 30, 1895	
138 Added	169	1899	June 23, 1899	Im. effect.
139 Added	169	1899	June 23, 1899	Im. effect.
140 Added	229	1897	Aug. 30, 1897	
140 Amended	204	1899	Sept. 23, 1899	
140 Amended	236	1903	June 18, 1903	Im. effect.
140 Amended	142	1905	May 25, 1905	Im. effect.
140 Amended	270	1909	Sept. 1, 1909	
141 Added	229	1897	Aug. 30, 1897	
141 Amended	204	1899	Sept. 23, 1899	
141 Amended	236	1903	June 18, 1903	Im. effect.
141 Amended	226	1905	Sept. 16, 1905	
141 Amended	270	1909	Sept. 1, 1909	
142 Added	229	1897	Aug. 30, 1897	
142 Amended	83	1903	Sept. 17, 1903	
142 Amended	142	1905	May 25, 1905	Im. effect.
142a Added	142	1905	May 25, 1905	Im. effect.
142a Amended	246	1917	Aug. 10, 1917	
143 Added	229	1897	Aug. 30, 1897	
143 Amended	128	1901	Sept. 5, 1901	
144 Added	97	1899	June 1, 1899	Im. effect.
144 Amended	10	1911	Aug. 1, 1911	
145 Added	154	1899	June 23, 1899	Im. effect.
145 Amended	174	1901	May 27, 1901	Im. effect.
145 Amended	281	1905	Sept. 16, 1905	
146 Added	154	1899	June 23, 1899	Im. effect.
146 Amended	174	1901	May 27, 1901	Im. effect.
146 Amended	281	1905	Sept. 16, 1905	
146 Amended	17	1911	Aug. 1, 1911	
146 Amended	260	1917	Aug. 10, 1917	
147 Added	154	1899	June 23, 1899	Im. effect.
147 Amended	281	1905	Sept. 16, 1905	
148 Added	154	1899	June 23, 1899	Im. effect.
148 Amended	281	1905	Sept. 16, 1905	
148 Amended	17	1911	Aug. 1, 1911	
148 Amended	153	1913	Aug. 14, 1913	
148 Amended	138	1915	Aug. 24, 1915	
149 Added	154	1899	June 23, 1899	Im. effect.
149 Amended	281	1905	Sept. 16, 1905	
150 Added	154	1899	June 23, 1899	Im. effect.

Section.	Act.	Year.	In effect.	
150 Amended	281	1905	Sept. 16, 1905	
150 Amended	153	1913	Aug. 14, 1913	
151 Added	154	1899	June 23, 1899	Im. effect.
151 Amended	153	1913	Aug. 14, 1913	
152 Added	154	1899	June 23, 1899	Im. effect.
152 Amended	281	1905	Sept. 16, 1905	
152 Amended	8	1909	Sept. 1, 1909	
152 Amended	17	1911	Aug. 1, 1911	
152 Amended	153	1913	Aug. 14, 1913	
152 Amended	265	1921	Aug. 18, 1921	
153 Added	154	1899	June 23, 1899	Im. effect.
153 Amended	281	1905	Sept. 16, 1905	
153 Amended	17	1911	Aug. 1, 1911	
154 Added	154	1899	June 23, 1899	Im. effect.
154 Amended	281	1905	Sept. 16, 1905	
155 Added	46	1901	Sept. 5, 1901	
156 Added	46	1901	Sept. 5, 1901	
157 Added	46	1901	Sept. 5, 1901	

Sec. 140 was added to the General Tax Law by Act 229 of 1897. Sections 138 and 139 are skipped in numbering sections, as bills proposing sections so numbered failed to pass in 1897.

See note Page 1255, Vol. 1, Compiled Laws of 1897.

ACT 206 OF 1893.

Acts Amending the Law and the Sections Amended.

Act 25 of 1895.	Sec. 9.
Act 154 of 1895.	Sec. 62-71-73-74-84-87-98-106-113-120-124-127-135.
Act 162 of 1895.	Sec. 66.
Act 229 of 1895.	Sec. 11-47.
Act 206 of 1897.	Sec. 108.
Act 214 of 1897.	Sec. 111.
Act 224 of 1897.	Sec. 87.
Act 225 of 1897.	Sec. 54-57-61-62-63-70-71-74-78-79.
Act 229 of 1897.	Sec. 140-141-142-143.
Act 240 of 1897.	Sec. 131.
Act 261 of 1897.	Sec. 42.
Act 31 of 1899.	Sec. 66.
Act 32 of 1899.	Sec. 14.
Act 83 of 1899.	Sec. 87.
Act 97 of 1899.	Sec. 144.
Act 107 of 1899.	Sec. 127-128-130-131-133.
Act 154 of 1899.	Sec. 21-22-145-146-147-148-149-150-151-152-153-154.
Act 169 of 1899.	Sec. 138-139.
Act 204 of 1899.	Sec. 140-141.
Act 215 of 1899.	Sec. 47.
Act 239 of 1899.	Sec. 18.
Act 262 of 1899.	Sec. 24-41-59-61-62-67-70-73-74-78-84-89-98-102.
Act 264 of 1899.	Sec. 66.
Act 39 of 1901.	Sec. 133.
Act 44 of 1901.	Sec. 7.
Act 46 of 1901.	Sec. 155-156-157.
Act 128 of 1901.	Sec. 143.
Act 129 of 1901.	Sec. 28.
Act 130 of 1901.	Sec. 53.
Act 141 of 1901.	Sec. 131.
Act 174 of 1901.	Sec. 145-146.
Act 193 of 1901.	Sec. 54.
Act 28 of 1903.	Sec. 43.
Act 80 of 1903.	Sec. 98.
Act 83 of 1903.	Sec. 142.
Act 84 of 1903.	Sec. 127.
Act 235 of 1903.	Sec. 11.
Act 236 of 1903.	Sec. 140-141.
Act 142 of 1905.	Sec. 140-142-142a.
Act 212 of 1905.	Sec. 98a.
Act 213 of 1905.	Sec. 58.
Act 226 of 1905.	Sec. 141.
Act 234 of 1905.	Sec. 61a.
Act 281 of 1905.	Sec. 145-146-147-148-149-150-152-153-154.
Act 34 of 1907.	Sec. 81-82.
Act 58 of 1907.	Sec. 73a.
Act 129 of 1907.	Sec. 14.
Act 326 of 1907.	Sec. 24-29-30.
Act 8 of 1909.	Sec. 152.
Act 19 of 1909.	Sec. 98a.
Act 270 of 1909.	Sec. 140-141.
Act 292 of 1909.	Sec. 34-37.
Act 309 of 1909.	Sec. 7-9.
Act 10 of 1911.	Sec. 144.
Act 17 of 1911.	Sec. 146-148-152-153.
Act 156 of 1911.	Sec. 43.
Act 174 of 1911.	Sec. 7.

Act 182 of 1911. Sec. 14.
Act 33 of 1913. Sec. 122.
Act 52 of 1913. Sec. 61a.
Act 72 of 1913. Sec. 65.
Act 76 of 1913. Sec. 53-58.
Act 153 of 1913. Sec. 148-150-151-152.
Act 201 of 1913. Sec. 34-37-37a.
Act 4 of 1915. Sec. 84.
Act 5 of 1915. Sec. 35.
Act 131 of 1915. Sec. 25.
Act 138 of 1915. Sec. 148.
Act 187 of 1915. Sec. 44-44a.
Act 208 of 1915. Sec. 131.
Act 1 of 1917. Sec. 43a.
Act 8 of 1917. Sec. 8.
Act 246 of 1917. Sec. 142a.
Act 260 of 1917. Sec. 146.
Act 302 of 1917. Sec. 127a.
Act 320 of 1917. Sec. 58-74.
Act 28 of 1919. Sec. 79.
Act 331 of 1919. Sec. 7.
Act 56 of 1921. Sec. 65.
Act 129 of 1921. Sec. 59-89.
Act 214 of 1921. Sec. 15.
Act 263 of 1921. Sec. 93-94. Repealed.
Act 265 of 1921. Sec. 152.
Act 297 of 1921. Sec. 8-9.
Act 380 of 1921. Sec. 34.
Act 163 of 1923. Sec. 14-120.
Act 277 of 1923. Sec. 130a-130b.

Total	Acts.
1895	4
1897	7
1899	12
1901	9
1903	6
1905	6
1907	4
1909	5
1911	5
1913	6
1915	6
1917	6
1919	2
1921	7
1923	2
	87

MAXIMS.

The authority to tax being fixed by the statutes must be strictly pursued.—Case v. Dean, 16 M. 12.

Taxes and assessments must be laid on principles of justice and equality.—Clay v. Grand Rapids, 60 M. 451.

Taxation for private purposes is unlawful.—Butler v. Saginaw Supervisors, 26 M. 22; Clee v. Sanders, 74 M. 692.

Taxes cannot be levied to accumulate funds for the future. —Midland v. Roscommon, 39 M. 424.

In paying taxes the citizen contributes his just and ascertained share to the expenses of the government under which he lives.—Black on Tax Titles 3.

The state alone possesses the power to authorize the assessment and levy of taxes and to establish rules therefor. A local custom which is opposed to the general policy of the State on the subject to which it refers is not valid in law.—Tremble v. Crowell, 17 M. 493.

A tax cannot be collected if not authorized by written law. —Folkerts v. Powers, 42 M. 283.

Without a valid assessment no subsequent step can have any color of validity.—Black on Tax Titles 89.

The assessor cannot legislate. He has to do solely with administering the law. As an officer of the county or of minor municipalities, he should remember that the county is responsible to the State for the regularity of taxes returned.—Auditor General v. Monroe Supervisors, 36 M. 71.

Every essential proceeding in a tax levy must be taken in conformity with the requirements of law, and must appear in some written and permanent form in the records of the bodies authorized to act upon them, a parol levy of taxes not being legally possible under our laws.—See Palmer v. Rich, 12 M. 414; Moser v. White, 29 M. 60; Mills v. Township of Richland, 72 M. 100, etc.

It is not sufficient that assessment in its various stages be regular in most things; it must be legal in all things.—See Tillotson v. Webber, 96 M. 144.

Statutes for the assessment and collection of taxes, as to what they require to be done for the protection of the tax payer, are mandatory and cannot be regarded as directory merely.—Clark v. Crane, 5 M. 151.

The provisions of the tax law must be strictly construed where a departure from them would prejudice the owner of the property taxed.—Houghton County v. Auditor General, 41 M. 28.

Township officers cannot ignore common sense and ordinary experience in discharging their duties.—Medina v. Perkins, 48 M. 67.

It is sometimes matter for serious regret that a court is compelled to declare a sale for taxes invalid where apparently no great injustice has been suffered; but when the necessity arises it is commonly because tax officers persistently disregard the limitations which are imposed by express statutes upon their authority.—Silsbee v. Stockle, 44 M. 561.

Every taxpayer is assumed to know the usual course taken to enforce payment directly, or in case of a return of delinquent property.—Louden v. East Saginaw, 41 M. 18.

Every owner of land is held to know the law. He knows that his land is subject to taxation; that he must pay his fair share of the public revenue and that if he fails to do so proceedings will be taken under the law against his land. It is his duty, therefore, to watch the proceedings provided for by the statute for the foreclosure of the lien and interpose any objection he may have to the validity of the tax.—Cole v. Shelp, 98 M. 56.

The policy of the law is that parties shall pay legal taxes even though there may be some irregularity in demanding them, and that they shall complain to the courts of those errors only which may injure them.—Stockle v. Silsbee, 41 M. 615.

If parties interested in the land which is liable to taxation are diligent in attending to the duty imposed upon them by the law, no hardship will be done them.—Berkey v. Burchard, 119 M. 101.

Statutes are to be construed in the light of previous history and surrounding circumstances; and their language is not to be measured by mathematical rules merely, but is subject, in the nature of things, to numerous implied exceptions or qualifications.—Kennedy v. Gies, 25 M. 83.

The primary object of all interpretation of statutes is to ascertain the real intent of the legislature; and while this intent must be inferred from the language used, it is not the meaning of the particular words only in the abstract, or their strictly grammatical construction alone that is to govern, but they are to be applied to the subject matter and general scope and purpose of the whole act, and to be considered with some reference to the evil sought to be remedied, and in the light of other statutes in pari materia, as well as the principles of the common law.—Whipple v. Judge Saginaw Circuit, 26 M. 341.

GENERAL TAX LAW

OF THE

STATE OF MICHIGAN

1923 EDITION.

BEING ACT 206, PUBLIC ACTS OF 1893, WITH AMENDMENTS.

AN ACT to provide for the assessment of property and the levy and collection of taxes thereon, and for the collection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes, and for the inspection and disposition of lands bid off to the State and not redeemed or purchased; and to repeal Act No. 200 of the Public Acts of 1891, and all other acts and parts of acts in anywise contravening any of the provisions of this act.

Title.

Act constitutional.—Toolan v. Longyear, 144 M. 55.

The one object of the act is to provide for collection of taxes and multiple character of the title does not bring it within the prohibition of Sec. 20, Art. IV., Constitution.—See Auditor General v. Stiles, 83 M. 460. The construction of titles covers that which is directly or indirectly connected with the subjects named.—See People v. Gadway, 61 M. 290, cases cited 287. Not necessary to set out in title every means necessary to accomplish the end sought.—Callaghan v. Chipman, 59 M. 613. The purpose is accomplished when the law has but one general object fairly indicated in the title. People v. Mahaney, 13 M. 481, 495; People v. Hurlbut, 24 M. 44; Stockle v. Silsbee, 41 M. 615; see also Auditor General v. Bay Co. Supervisors, 106 M. 662; and notes to Secs. 135 and 143. Omission of statement that object is also to punish violators does not render provisions therefor invalid.—Insurance Co. v. Raymond, 70 M. 485.

The constitutional inhibition against double taxation applies only to double taxation by this State. Where a tax law is construed, it is never to be presumed that a legislature intended a double tax, if such conclusion can be reasonably avoided.—Stroh v. City of Detroit, 131 M. 109.

SECTION 1. (3995 C. L. '15) *The People of the State of Michigan enact*, That all property, real and personal, within the jurisdiction of this State, not expressly exempted, shall be subject to taxation.

Property subject to taxation.

History:—C. L. '97, 3824.

The legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law.—Sec. 11, Art. XIV, Constitution. A tax within the meaning of Art. XIV is a charge for public uses.

Jurisdiction is co-extensive with territory.—People v. Tyler, 7 M. 161, 219. Territory includes lakes and rivers within limits of State.—Id. 228-9. All property is within the taxing power unless designedly put beyond it by the sovereign power of the State.—Robertson v. Commissioner State Land Office, 44 M. 274. The several estates constituting the fee to real property in mineral lands must be assessed together, regardless of the number of the owners. An assessment of mineral rights and the fee in one tax, against the land as a whole is valid.—Curry v. Lake Superior Iron Co., 190 M. 445.

For exemptions specified in this act see Secs. 7 and 9.

EXPRESSLY EXEMPTED BY OTHER ENACTMENTS: Military bounty land while held by patentees or their heirs for three years after date of patent.—Ordinance of 1836, C. L. '15, p. 113 cannot be held to mean three years from location.—People ex rel. Throop v. Auditor General, 9 M. 134; Indian allotment lands allotted under act of Feb. 28, 1887, as amended 1891.—Chap. 383 U. S. Stat. v. 24. Property of corporations exempt by reason of paying specific taxes.—See notes to Sub. 8, Sec. 7; shares in building and loan association, inc. under Act 50 of 1887, and mortgages and other securities held by such association.—10011 C. L. '15 (does not include shares in similar associations of other states); property of agricultural societies inc. under Act 80 of 1855, when used solely for the purposes of their incorporation.—See 7832 C. L. '15; for limitations; also Sub. 9, Sec. 7; certain properties of musical societies inc. under Act 128 of 1857.—10801 C. L. '15; lands, etc., of rural cemetery associations inc. under Act 12 of 1869.—11160 e. s. C. L. '15; real property of hospitals or asylums inc. under Act 242 of 1863.—10840 e. s. C. L. '15; property not exceeding in value of $100,000 of industrial and charitable schools inc. under Act 135 of 1867.—10832 e. s. C. L. '15; personal property of society of marksmen inc. under Act 33 of 1869.—10123 C. L. '15; property of incorporations for cultivation of art inc. under Act 3 of 1885.—10759 e. s. C. L. '15; homes for aged, etc. inc. under Act 52 of 1897.—10823 e. s. C. L. '15; property of women's auxiliary association of University of Michigan.—4191 C. L. '15; private burial grounds.—11204 C. L. '15. All domestic corporations now come within the provisions of Act 84 Public Acts of 1921.

OF REAL PROPERTY.

Real property defined.

SEC. 2. (3996) For the purpose of taxation real property shall include all lands within the State, and all buildings and fixtures thereon, and appurtenances thereto, except such as are expressly exempted by law.

History:—C. L. '97, 3825.

"Lands" and "real estate" include all rights thereto and interests therein.—64 C. L. '15. Includes standing timber.—Sovereign v. Ortman, 47 M. 181; Spalding v. Archibald, 52 M. 365; Williams v. Flood, 63 M. 487. And unsevered crops.—Coman v. Thompson, 47 M. 22; Knapp v. Wolverton, 47 M. 292; Preston v. Ryan, 45 M. 174.

Standing timber is assessable as realty, being an interest in the land.—Fletcher v. Township of Alcona, 72 M. 18; Williams v. Hyde, 98 M. 152.

Where land has been conveyed and the standing timber reserved, such reserved interest may be assessed separately as real estate.—Ward et al. v. Echo Township, 145 M. 56. But nursery stock is assessable as personal property.—See Sub. 14, Sec. 8.

Where land is owned by one person and buildings thereon by another the two are to be separately assessed.—Cooley on Taxation, 367. Private buildings on lands of the United States or this State are assessed as personal property.—Sub. 7, Sec. 14. So are buildings on leased lands.—Sub. 11, Sec. 8.

"Such as are expressly exempted by law" should be understood as meaning not merely "exempted" from taxation, but also such buildings and appurtenances as are expressly classified elsewhere in the general tax law as personal property.—See Subs. 10, 11, 12, 14 and 16, Sec. 8. For real estate exemptions see Sec. 7 and notes to Sec. 2.

Riparian rights of owners of lands abutting on water should be considered in the assessment of such lands and not assessed separately.—See cases cited in Boom Co. v. Adams, 44 M. 404. Water power should be assessed with the land on which the power is obtained as a part of the realty. So with mineral deposits or quarries and all that pertains to the land, consideration being given thereto in the determination of value.—See Sec. 27.

Real estate owned by railroads or union depot companies and not actually occupied in the exercise of their franchises is liable to taxation.—8287 C. L. '15. See also 3964-7.

The engines, boilers, dynamos and other machinery affixed to relator's land in a permanent manner is subject to municipal tax as a part of the real estate under the provisions of Sec. 2.—Detroit United Ry. v. Board of State Tax Commissioners, 136 M. 96.

Where double taxation results under a law not intended to impose a double tax, the act is not necessarily invalid by reason of double taxation; but where a law by its terms necessarily requires double taxation, the act must be so construed as to avoid double taxation or be declared invalid.—Stroh v. City of Detroit, 131 M. 109.

The legislature may exempt from taxation the stock of and mortgages held by building and loan associations. (citing Hall v. Burlingame, 88 M. 436, and Supervisors v. Auditor General, 65 M. 406) and Sec: 17 of the Building and Loan Act, Sec. 10011 C. L. '15, exempting from taxation shares held by members and mortgages held by the association are expressly saved by the provisions of the General Tax Law of 1893.—National Loan & Investment Co. v. City of Detroit, 136 M. 451.

Section 14 of Act 39, P. A. of 1887, authorizing the payment of a definite specific tax of corporations organized under the act, in place of an ad valorem tax at the option of the corporation, is not a delegation of legislative power and the provision is valid.—Beadle v. Arnot, 145 M. 416.

RIPARIAN RIGHTS: Any erection which can lawfully be made in the water within the limits of riparian rights belongs to the riparian estate.—Ryan v. Brown, 18 M. 196. Boundary between riparian rights is determined by extending a line from boundary at shore perpendicularly to the general course of the stream opposite that point.—Clark v. Campau, 19 M. 325. Riparian rights, unless expressly exempted, extend to the middle of the navigable channel, and cover any shallows or middle ground not shown in the government survey but lying between such channel and the shore.—Fletcher v. Thunder Bay Boom Co., 51 M. 277. As to riparian rights in the Great Lakes, see Lincoln v. Davis, 53 M. 375. Title of riparian owner extends to the middle line of the inland waters.—Webber v. F. &. P. M. Boom Co., 62 M. 626; Grand Rapids Ice and Coal Co. v. South Grand Rapids Ice and Coal Co., 102 M. 227. Owner of fractional divisions made so by an inland lake owns the soil under the water of said lake which should be included within the subdivision if its lines were fully extended.—Clute v. Fisher, 65 M. 48. Where the government has surveyed its lands along bank of river and has sold and conveyed them by government subdivisions, patent conveys title to all islands lying between the meander lines and the middle thread of the river, unless previous to its issuance the government has surveyed such islands as government subdivisions or has expressly reserved them where not so surveyed.—Butler v. Railway Co., 85 M. 246. Where the government does not meander an island or indicate an intention to set it apart, it passes as appurtenant to the grant of the lands on the shore, and cannot at a subsequent time be surveyed and sold as an island.—Church v. Case, 122 M. 554. Grantee of land bounded by a meandered river takes title to the middle thread of the main channel of the stream and may maintain his right to a so called "island" lying between such channel and the main land, unless it appears that the government ever surveyed or treated the intervening land as an island.—Gough v. Cougle, 118 M. 307.

Riparian owners along the great lakes own only to the meander line, and the title to land outside the meander line, subject to the right of navigation, is held in trust by the State for the use of its citizens.—Kavanaugh v. Robier, 222 M. 68.

Where and to whom assessed.

SEC. 3. (3997) Real property shall be assessed in the township or place where situated, to the owner if known, and also to the occupant, if any; if the owner be not known, and there be an occupant, then to such occupant, and either or both shall be liable for the taxes on said property, and if there be no owner or occupant known, then as unknown. A trustee, guardian, executor, administrator, assignee or agent, having control or possession of real property, may be treated as the owner. The real property which belonged to a person deceased, not being in control of an executor or administrator, may be assessed to his heirs or devisees jointly, without naming them, until they shall have given notice of their respective names to the supervisor, and of the division of the state.

History:—C. L., '97, 3826.

Assessments should be to the owner if known. If occupied and owner is unknown then to the occupant, if any. If neither is known and only in such case, assessment should be as "unknown." The owner is the person having the legal title, and assessment should be to the true owner if he can be discovered. In determining ownership, assessors are not bound to go behind the records; and if title is in litigation it is not for them to decide who is the owner.—Black on Tax Titles, 107. Land is properly assessed to one having title of record.—Loud & Sons Lumber Co. v. Hagar, 118 M. 452. If no one holds actual possession, the owner of the title has constructive possession.—Ruggles v. Sands, 40 M. 559. One in possession of land claiming it as his own, is bound to pay the taxes imposed upon it which become due during his possession.—Dubois v. Campau, 24 M. 360. Tenancy of any sort is a species of title.—Van Doozer v. Dayton, 45 M. 247. A life tenant should be assessed as owner during the continuance of life estate.—Jenks v. Horton, 96 M. 13; Austin v. Hyndman, 119 M. 615. It is the duty of tenants of lands for life to pay the taxes.—Smith v. Blindbury, 66 M. 319. Where life tenant fails to pay taxes, title passes to the purchaser under tax sale, and remainder-man's remedy is against owner of life estate.—Watkins v. Green, 101 M. 493.

Occupancy might consist of cultivation and use without actual residence or might be by tenant.—Cummings v. State Treasurer, 7 M. 366. To be an occupant it is not necessary that he should have his home upon the premises.—Tweed v. Metcalf, 4 M. 579. If a husband has the care and occupancy of the wife's land it may be assessed to him as occupant; but if they live apart and the husband has not the charge or possession of the land, it must be assessed to the wife.—Black on Tax Titles, 100. Payment of taxes in previous years under the same conditions may properly be considered in determining how person paying regarded his occupancy.—Hood v. Judkins, 61 M. 575.

Real estate held by a trustee, guardian, executor, administrator, assignee or agent should be assessed in his name as owner, but with the addition of the designation of his fiduciary capacity.—Black on Tax Titles, 106. Assessment to estate by name is equivalent to assessment to heirs or devisees without naming them.—Dickinson v. Reynolds, 48 M. 159. The designations "heirs" and "devisees" or "legatees" should not be confounded.

Land held by two or more tenants in common should be assessed to all jointly, or undivided interests to each severally.—See Sec. 6. An assessment of land in a township where it does not lie is void, although it was not assessed in the proper township.—Taylor v. Youngs, 48 M. 268.

A mortgage conveys no title to the mortgagee.—Hogsett v. Ellis, 17 M. 351; Wagar v. Stone, 36 M. 364. Assessment and subsequent proceedings to enforce payment of the taxes does not estop the State from afterwards claiming lands as escheated lands.—Crane v. Reeder, 25 M. 303.

One cannot avoid taxation by the conveyance of his land to a third party, where the object of the conveyance is simply to avoid taxation and not to make a sale in good faith to the party taking the conveyance.—H. M. Loud & Sons Lumber Co. v. Elmer, 123 M. 61.

The duty to pay taxes rests on a life tenant as between him and the remainder-man.—Myers v. Myers, 186 M. 215.

Taxes are properly chargeable to the remainder-man where the property was unproductive.—Poole v. Union Trust Co. 191 M. 162.

A lease providing that the lessee should pay all taxes of every nature and kind whatsoever levied upon the premises does not include federal income taxes.—Park Building Co. v. George P. Yost Fur Co., 208 M. 349.

See Secs. 4, 5, 6, 7, 11, 24, 29, 39, 99.

Homestead and part paid State lands.

SEC. 4. (3998) All licensed homestead lands, the fee of which is in the State, when the licensee is entitled to make final proof to obtain a patent for the same, shall be assessed and treated as real property. The interest in land of any person holding part paid certificates for the purchase of any State lands shall be assessed separate from other property. The assessment shall describe the land and shall state therein that the title is in the State. The taxes, if not paid to the township treasurer, shall be returned and collected as hereinafter provided.

History:—C. L. '97, 3827.

The interest acquired under part paid certificate of purchase of State lands is part of the individual property of the purchaser and is to be assessed as personalty, but separate from the general valuation of his personal property, and in the town where the land lies.—Robertson v. Land Commissioner, 44 M. 274. See Attorney General v. A. P. Cook Co., 122 M. 453.

The fact that an interest in land located with script for which no patent has been issued, is assessed as real property and not as personal property will not avoid a tax paid, the owner having the right to appear before the board of review and ask that the assessment be changed from real property to personalty. —McKinnon v. Powers, Auditor General, 130 M. 552.

The county treasurer shall furnish lists of such lands and of the names of patentees and licensees to supervisors on or before April 10th.—Sec. 92.

See Sec. 132; also 679 and 4183-85, C. L. '15.

Corporation realty.

SEC. 5. (3999) The real property of a corporation shall be assessed to the name of the corporation as to an individual, if known, in the township or place where situated, or it may be assessed to the occupant or to any authorized agent if so requested of the supervisor.

History:—C. L. '97, 3828.

A corporation whose property is taxable stands on the same footing as an individual under our taxing laws.—Graham v. St. Joseph, 67 M. 652.

A corporation has its residence for taxation purposes at the place where its principal office is located.—City of Detroit v. Lothrop Estate, Ltd., 136 M. 265.

Undivided interests.

SEC. 6. (4000) Undivided interests in lands owned by tenants in common, not being co-partners, may be assessed to the owners thereof, if so requested, and in the discretion of the supervisor.

History:—C. L. '97, 3829.

If so assessed the undivided interests assessed to each must be specified. In assessing undivided interests the acreage should be given entire. For instance, the acreage in assessing the undivided half of the N. ½ of N. E. ¼ would be 80 acres, not 40.

Where purchasers of undivided half of wild timber lands under a contract silent as to possession and payment of taxes, lumber the land and receive half the benefits of the lumbering, they are liable for half of the taxes levied after the purchase.—Thompson v. Noble, 108 M. 26.

Husband and wife are not tenants in common of lands conveyed to them jointly.—Fisher v. Provin, 25 M. 347.

REAL ESTATE EXEMPTIONS.

SEC. 7. (4001) The following real property shall be exempt from taxation:

Public property.

First, All public property belonging to the United States;

State property.

Second, All public property belonging to the State of Michigan, except licensed homestead lands, part paid lands held under certificates, and lands purchased at tax sales, and still held by the State;

County, etc.

Third, Lands owned by any county, township, city, village or school district and buildings thereon, used for public purposes;

Libraries, etc.

Fourth, Such real estate as shall be owned and occupied by library, benevolent, charitable, educational and scientific institutions, incorporated under the laws of this State, with the buildings and other property thereon, while occupied by them solely for the purposes for which they were incorporated: *Provided*, That such exemption shall not apply to fraternal or secret societies, but all charitable homes of such societies shall be exempt;

Charitable homes.

Houses of public worship.

Fifth, All houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and also any parsonage owned by any religious society of this State and occupied as such;

Burial grounds.

Sixth, All lands used exclusively as burial grounds, and the rights of burial therein, and the tombs and monuments therein, while reserved and in use for that purpose: *Provided*, That the stock of any corporation owning such burial grounds shall not be exempt;

Poor persons.

Seventh, The real and personal property of persons who, in the opinion of the supervisor and board of review, by reason of poverty, are unable to contribute toward the public charges;

Corporations paying specific taxes.

Eighth, The real property of corporations exempt under the laws of this State, by reason of paying specific taxes in lieu of all other taxes for the support of the State: *Provided*, That tracks, right of way, depot grounds and buildings, machine shops, rolling stock, and all other property necessarily used in operating any railroad in this State belonging to any railroad company, shall henceforth remain exempt from taxation for any purpose, except that the same shall be subject to special assessments for local improvements in cities and villages, and all lands owned or claimed by any such railroad company not adjoining the tracks of such company, shall be subject to all taxes;

Agricultural societies.

Ninth, Property owned exclusively by the State agricultural society or any county or district agricultural society, and used by any such society exclusively for fair purposes;

Parks, armories, monuments.

Tenth, All land dedicated to the public and actually used as a park, and any monument ground or any armory belonging to any military organization, and not used for gain or any other purposes;

Homestead of soldier or sailor, etc.

Eleventh, All real estate to the value of one thousand dollars used and owned as a homestead by any soldier or sailor of the federal government who served three months or more during the Spanish-American, Civil or Mexican war, and all real estate to the value of one thousand dollars used and owned as a homestead by any wife or widow of such soldier or sailor: Provided, however, That should such homestead exceed in value the sum of one thousand dollars, it shall be exempt only to the amount of such sum: Provided, further, That any soldier or sailor or the wife or widow of any such soldier or sailor desiring to accept the benefits named in this section as to the exemption from taxation shall annually make and file with the supervisor or assessing officer an affidavit stating under oath that he was a soldier or sailor of the federal government during the Civil, Mexican or Spanish-American war for a period of not less than three months, and in case it be the wife or widow of a soldier or sailor making such application, such affidavit must state that she is the wife or widow of a soldier or sailor of the federal government at the present time, who served not less than three months as such soldier or sailor during the Spanish-American, Civil or Mexican war. The said affidavit shall be sworn to before said supervisor, assessing officer or any officer authorized to administer oath and then filed with the said officer in his office, where the same shall be open to inspection. Any person making a false affidavit in any particular for the purpose of exemption from taxation shall be deemed to be guilty of the crime of perjury, and punished accordingly: Provided, however, That this exemption shall not operate to relieve from the payment of taxes any of the persons hereinbefore enumerated who are the owners of taxable property of greater value than three thousand dollars. Whenever any tax roll is placed in the hands of a city, village or township treasurer for collection, and there are taxes assessed thereon against any property upon which exemption is claimed under this subdivision, it shall be the duty of such treasurer to prepare a statement showing all descriptions upon such roll upon which exemptions have been claimed and allowed under this subdivision, the names and addresses of the persons entitled to such exemptions, the total amount of taxes, allowed for such exemptions, together with the amount of taxes assessed against such descriptions. Such treasurer shall then forward such statement to the Auditor General, upon receipt of which it shall be the duty of the Auditor General to draw his warrant upon the State Treasurer for the total amount of taxes allowed as exempt hereunder as shown by such statement, and turn such warrant over to the State Treasurer, and the State Treasurer shall thereupon forward to such city, village or township treasurer, as the case may be, a check for the amount of such warrant. All amounts so allowed shall be paid from the general fund in the State Treasury and it

Proviso, limit of exemption.

Proviso, sworn affidavit.

False affidavit.

Proviso, limit of exemption.

Duty of village, etc., treasurer in case of claimed exemptions.

Auditor General.

State Treasurer.

Tax clause.

shall be the duty of the Auditor General to add to and incorporate in the State tax each year a sum sufficient to reimburse the general fund for the amounts so paid;

Auditor General to make estimate.

Proviso, in case of budget system.

Tax clause.

Twelfth, The Auditor General shall estimate, as near as may be, the amount of money necessary to meet the expense of administering the provisions of subdivision eleven under this act during each year of the biennial period, commencing the first day of July, nineteen hundred nineteen, and he shall make a similar estimate every two years thereafter: Provided, That if the Legislature shall provide for a budget system of making and controlling appropriations, then, and in that case, the duty imposed upon the Auditor General by this section shall thereafter be discharged by a budget commission or budget commissioner, as the case may be, and the expense of administering the provisions of subdivision eleven under this act shall be met by a specific appropriation, inclosed in the budget. There is hereby authorized from the general fund of the State a sufficient sum to meet the expenditures necessary to carry out requirements of subdivision eleven under this act, and the Auditor General is hereby directed to incorporate in the State tax a sufficient amount to reimburse the general fund for the money drawn from it for the purposes herein provided.

History:—C. L. 97, 3830; Am. 1901, p. 67, Act 44, Eff. Sept. 5:—Am. 1909, p. 758, Act 309, Eff. Sept 1:—Am. 1911, p. 296, Act 174, Eff. Aug. 1:—Am. 1919, p. 584, Act 331, Eff. Aug. 14:

Exemption ought to receive a strict construction.—Cooley on Taxation, 205. Statutes providing for exemption from taxation must be understood as exempting only as therein specified and not otherwise. There are few questions upon which assessors should so carefully confine their acts to the strict letter or the unmistakable intent of the law as in the matter of exemptions. In Johnston v. City of Oshkosh, 27 N. W. Rep. 320, it was held that when assessors omit property in good faith, because they believe the legislature has enacted a law exempting such property, when it has not, the assessment was invalid.

The language of the legislature in exempting from taxation is as much entitled to obedience as that imposing taxation.—Home and Day School v. Detroit, 7 M. 521. A construction will not be put upon a tax law which will enable a party for whom no purpose of exemption is expressed to escape taxation.—Philadelphia v. Ridge Avenue Railroad Co., 102 Pa. St. 190. A homestead is not exempt from taxation or from sale for taxes.—12,894, C. L. '15.

Exemption from taxation does not exempt from municipal taxes or local assessments.—Black on Tax Titles, 64, 81. Exemption by charter of certain unplatted lands from taxation for fire department purposes must be regarded, but does not exempt from taxation for interest on water works bonds.—Baldwin v. City of Hastings, 83 M. 639. Inferior municipalities (counties, townships, school districts, cities and villages) cannot make exemptions except expressly authorized by the State.—Black on Tax Titles, 30. Exemption of certain surveyed townships in a school district from a general school tax invalidates the levy.—Auditor General v. McArthur, 87 M. 457.

An agreement between a municipality and a corporation organized for the purpose of supplying the city with water, under which the city agreed to pay a portion of the taxes which might be assessed against the company made upon good consideration does not create an exemption from taxation.—Ludington Water Supply Co. v. City of Ludington, 119 M. 480; Alpena City Water Co. v. City of Alpena, 130 M. 518. Exemption from taxation of a property employed in a business upon which a State bounty is paid is in its nature and purpose only a bounty law and not a contract and may be repealed at any time.—East Saginaw Mfg. Co. v. City of East Saginaw, 19 M. 259.

SUB. 1. Real property of the United States is not subject to taxation until sale or other disposition so as to divest the government of its title.—Black on Tax Titles, 9. See 235-7 C. L. '15.

Lands, the title to which still remains in the native Indians, or in the United States in trust for them, are not taxable by the State for any purpose.—Black on Tax Titles, 42. "Native Indian" synonymous with an Indian who is not a citizen or one holding tribal relations.—See Sub. 6, Sec. 9. Lands patented to a "not so competent" Indian under treaty prohibiting its alienation without the consent of the government is not subject to taxation.—Auditor General v. Williams, 94 M. 180. The equity of the purchaser of government land must be valid and complete before the land is taxable.—Black on Tax Titles, 37. But patent need not have actually issued.—See note to Sub. 2. The possessory interests which private individuals may hold in the public land of the United States for mining, agricultural of other purposes, are not subject to taxation by the State.—Black on Tax Titles, 40.

See notes to Sec. 1.

SUB. 2. The public property of the State includes the property of all public institutions supported by the State.—Auditor General v. Regents, 83 M. 467. See Mich. State Bank v. Hastings, Walker's Chan. Rep., 9. State lands are taxable as private property when the purchaser has become possessed of a perfect equitable title to the land though no patent is yet issued. But if any condition precedent remains to be fulfilled before the grantee becomes entitled to the fee, the land is not taxable to the purchaser as realty.—For assessment of the interest in such lands see Sub. 10, Sec. 8.

Title of lands escheated is in the State.—Crane v. Reeder, 21 M. 24.

Vacant, unimproved lots, owned by the State University, but not used for university purposes are subject to special assessments.—Auditor General v. MacKinnin Boiler & Machine Co., 199 M. 489.

SUB. 3. But when not so used, but rented to private persons, such realty is subject to taxation.—Black on Tax Titles, 49. So also if neither rented nor used for public purposes. Such lands subject to local assessments for benefits only when legislative provision therefor is clear.

Property of county cannot be sold to enforce collection of sewer tax.—Big Rapids v. Supervisors, 99 M. 351. In Lansing v. Board of State Auditors, 111 M. 327, the provision of the city charter providing for assessment of State property for police and fire protection was held to be unconstitutional, not being expressed in the title to the act. Land owned by Board of Water Commissioners of Detroit held to be exempt though rented, the act creating the board expressly providing that all lands of the board should be exempt without exception.—Board of Water Commissioners v. Auditor General, 115 M. 547.

Land used for city streets is not subject to taxation or sale for taxes.—Graham v. City of Detroit, 174 M. 538.

Under the home rule act and the constitution, real estate owned by a city and used for city purposes, even though located outside the corporate limits of such city, is exempt from taxation.—City of Traverse City v. Blair, 190 M. 313.

Real estate owned by a city, located outside its boundaries, but not used for public purposes is not exempt from taxation.—City of Traverse City v. Twp. of East Bay, 190 M. 327.

Lands purchased by a city after the assessment roll has been reviewed by the board of review are subject to taxation for the taxes of that year.—Triangle Land Co. v. City of Detroit, 204 M. 442.

SUB. 4. Benevolent, charitable, educational or scientific institutions must be organized chiefly if not solely for one or more of these objects. To claim exemption under this Sub. it is not enough that one of these objects is of that character. —Attorney General v. Common Council, 113 M. 388.

Chapter 224 providing for the incorporation of charitable hospitals, etc., and exempting from taxation the property on which the hospital stands is sufficiently charitable to entitle it to the privilege of the act when the charges collected for services are not more than needed for its successful maintenance.—Michigan Sanitarium and Benevolent Association vs. City of Battle Creek, 138 M. 676.

Building owned by corporation organized under Act 53 of 1865 "for the purpose of free reading room and library" which was leased for club purposes, not exempt.—Auditor General v. Women's Temperance Association, 119 M. 430. Exemption of real property of libraries used and occupied by them for the purposes of the organization does not include tenements under the same roof.—Det. Y. M. S'cy v. Mayor, 3 M. 172. The fact that the building is so constructed that the parts leased to third party cannot be separated from the residue by definite lines is no obstacle to a valuation of such parts for purposes of taxation, having due reference to the taxable value of the entire property.—Black on Tax Titles, 60. See Sisters of Charity v. Detroit, 9 M. 94.

The term "Scientific Institution" means an institution for the advancement or promotion of knowledge. A corporation organized under Chap. 2, P. A. 1921, "to establish, maintain and conduct a seminary of learning," the actual business of which has been the maintenance of such a seminary, is not taxable for its realty occupied by its school buildings.—Home and Day School v. Detroit, 76 M. 521. This evidently brings all colleges incorporated under the laws of this State within the provisions of this section.

The property of an unincorporated scientific institution, the benefit of whose library, museum, etc., is restricted to members, is not exempt. A hospital is not excluded from the list of "charitable" institutions because persons of pecuniary ability are required to pay for what they receive, when not exacted as a means of gain.

A business college organized under chapter 203 C. L. 1915 for the benefit of its stockholders and offering courses of three, six, nine and twelve months in stenography, bookkeeping and related studies, is not a general educational institution, the real estate of which may be held exempt from taxation.—Parson's Business College v. City of Kalamazoo, 166 M. 305.

INSTITUTIONS INCLUDED: Public art institutions inc. under Act 3 of 1885—10759 C. L. '15. Associations for establishing scholarships in University of Michigan.—10676 e. s. C. L. '15. Libraries and lyceums incorporated under Chap. 55, R. S. '46.—10683 e. s. C. L. '15. Polytechnic associations inc. under Act 95, 1869.—10703 e. s. C. L. '15. Historical, biographical and geographical societies inc. under Act 156 of 1873.—10710 e. s. C. L. '15. Associations for intellectual, scientific, aesthetic, etc., culture, inc. under Act 79 of 1879.—10718n e. s. C. L. '15. Engineering societies inc. under Act 232 of 1887.—10909n e. s. C. L. '15. Benevolent societies inc. under Act 155 of 1897.—10802 e. s. C. L. '15. Charitable societies inc. under Act 20 of 1855.—10816 e. s. C. L. '15. Homes for aged, infirm or indigent persons inc. under Act 52 of 1897.—10823 e. s. C. L. '15. Hospitals and asylums inc. under Act 242 of 1863.—10840 e. s. C. L. '15. Michigan State medical societies inc. under Act 169 of 1879.—10143 e. s. C. L. '15. Eclectic medical societies inc. under Act 58 of 1877.—10149 e. s. C. L. '15. Veterinary medical associations inc. under Act 56 of 1891.—10163 e. s. C. L. '15. Bar associations inc. under Act 107 of 1881.—10169 e. s. C. L. '15. Teachers' associations inc. under Act 117 of 1855.—10174 e. s. C. L. '15. Charitable societies inc. under Act 166 of 1899. Institutions of learning inc. under Act 390 of 1855.—10642 e. s. C. L. '15. See Home and Day School v. Detroit, 76 M. 521.

EXCEPTIONS: Property of industrial and charitable schools inc. under Act 135 of 1867 as amended by Act 50 of 1895 in excess of $100,000.00 is not exempt.—10836 C. L. '15. Real property of corporations for literary and scientific purposes inc. under Act 160 of 1895 not exempt. Act repeals act of 1865.—10689 e. s. C. L. '15. Real property of musical societies inc. under Act 128 of 1857 not exempt except where corporation is composed entirely of women not for profit but solely for study of music and to advance musical knowledge, and only on condition that no rental is derived from the building and that the society give at least two free musical entertainments during each year.—10794-10801 C. L. '15. Property of societies for study of literature inc. under Act 200 of 1897 is not exempt.—10701 C. L. '15. Property of associations for encouragement of fine arts inc. under Act 233 of 1865 is not exempt.—10738 e. s. C. L. '15. Such properties of ecclesiastical bodies inc. under Act 209 of 1897.—10889 e. s. C. L. '15, as are exempt are particularly defined in Sub. 5.

Exemption from taxation does not follow from the mere fact of ownership of land by an educational institution, but is based upon, and only applies to, ownership combined with occupation for the purposes of its incorporation.—Webb Academy v. City of Grand Rapids, 209 M. 523.

SUB. 5. Exemption of house of public worship applies only to taxes imposed under the general system of taxation and does not extend to assessments for paving or other local improvements.—Lefevre v. Mayor, 2 M. 586.

Such part of a building as is used exclusively for religious purposes may be exempt from taxation and the part not so used may be subject to taxation.—Black on Tax Titles, 73.

Funds in the hands of trustees of church for the purpose of being invested as a permanent fund, the interest of which alone is to be used for the support of wornout ministers, their widows and orphans, are subject to taxation.—Atty. Genl. Op. 1902, p. 75.

A church edifice which is no longer used as a place of public worship is not exempt. Churches owned by private persons and not by organized societies are not exempt; but the fact that the title to the church of an organized society is in the name of a trustee or trustees does not except it from exemption. Land owned by a church and not used for its purposes is not exempt, unless held with the purpose of building a church thereon. A diocesan residence is not exempt as a parsonage. A Young Men's Christian Association building is not exempt as a house of public worship.

Land owned by a church is not exempt from taxation unless actually used for church purposes. The fact that such land was used for church purposes after the completion of the assessment roll and before the date that the taxes became a lien under the statute, would not entitle the church society to claim such exemption.—St. Joseph's Church v. City of Detroit, 189 M. 408.

SUB. 6. Improvements essential to the use and enjoyment of the land for the purposes of a cemetery are exempt. Land within the boundaries of a cemetery dedicated or acquired for burial purposes is exempt though not actually used therefor.—Black on Tax Titles, 75. But land owned by any burial ground association inc. under Act 87 of 1855.—11122 e. s. C. L. '15, and not being part of its burial grounds, is not exempt.—11157 e. s. C. L. '15. Old cemeteries are exempt where city or village ordinances prevent further interment.

If the stock of the Elmwood Cemetery Association is assessed, the shares of stock would not be assessable to the individual holders under Sub. 7, Sec. 8. If the shares are assessed, the personal property should not be. Opinion Attorney General, 1900, p. 177.

Real property of cemetery associations is exempt from general taxes and from taxes for special assessments.—Woodmere Cemetery Association v. City of Detroit, 192 M. 553.

SUB. 7. The exemptions must be determined by the board of review before certifying to the assessment rolls, and no general taxes on property so exempt should appear upon the tax roll.

SUB. 8. Includes plank road companies.—8666 and 8717 C. L. '15; river improvement Co's.—8822 e. s. C. L. '15 (not 8850 e. s. 8864 e. s.); railroad companies.—Act 282, laws 1905, except such real estate as is not actually occupied in the operation of the road; union depot companies and express companies, Act 282, laws 1905; life insurance companies not incorporated under Michigan laws.—9338 C. L. '15 (other insurance companies paying specific taxes are not exempt thereby from taxation of their property within the State); telegraph and telephone companies, except such real estate as is owned and can be conveyed under the laws of this State and not actually occupied in the exercise of its franchises and not necessary in the proper operation of its business.—Act 179 of 1899 (see Attorney General v. Common Council, 113 M. 388.) Does not include musical societies inc. under Act 128 of 1857. See 10801 C. L. '15. 4205 C. L. '15 superseded.

Section 14 of Act 39 of 1883.—8901n C. L. '15, as amended by Act 231 of 1899, provides that corporations for constructing, etc., water courses may on or before the second Monday in April of any year, elect to pay a specific tax in lieu of all general taxes upon the lands upon which water course is located and which shall be appurtenant thereto and the improvements thereon.

When by consent of a railroad company its land is exclusively devoted to a business foreign to the purpose of its organization and in which it cannot engage, such land is not occupied by it and not necessary or in use in the proper operation within the statute exempting it from general taxation on payment of a specific tax. Grand Rapids & Indiana Railway Co. v. City of Grand Rapids et al., 137 M. 587.

It is held that "right of way" is *not* limited to a strip of land of any definite width at all points in the line of the railroad, but includes lands and lots acquired for necessary side tracks, turn outs, and improvements thereon such as coal sheds, freight houses, water tank, repair shops, round houses and other needed and necessary properties, the use of which is deemed essential to the successful operation of the property. Pfaff v. Terre Haute R. R. Co., 9 N. E. Rep. 93; Chicago, etc., R. R. v. People, 98 Ill. 350.

Only such lands of a railroad company as are held and presently used for railroad purposes are exempt from taxation, and the exemption does not apply to lands that have been acquired with a view of future use by the company.—Auditor General v. F. & P. M. R. R. Co., 119 M. 682.

Railroad land and buildings thereon belonging to the corporation which are leased to private person, company or firm for private business is liable to taxation even though by the terms of the lease the tenant is under obligations to perform certain services in his line of business for the railroad and to furnish a certain amount of freight annually for transportation over the railroad company's lines.—Black on Tax Titles 65. Land in railroad yards occupied by lumber company but no rental paid held not subject to taxation, it being shown that the land is used constantly by the company in the exercise of its franchise.—Auditor General v. F. & P. M. R. R. Co., 114 M. 682. An elevator erected by a railroad or union depot company on its lands and owned by the corporation as a grain warehouse in connection with its general business is a necessary equipment and exempt from ordinary taxation.—Detroit U. R. D. & S. Co. v. Detroit, 88 M. 347. Railroad hotels for general accommodation are not exempt.—Black on Tax Titles 67. A toll house owned by a plank road company and the lot on which it stands, if owned by the company, although not actually within its right of way, is exempt from ordinary taxation while used solely as a toll house and residence for its keeper.—Plank Road Co. v. Detroit, 81 M. 562.

SUB. 9. Where the track and horse barns upon fair grounds are rented to horse trainers and breeders, the proportionate value of such realty so leased is subject to assessment. See 7832 C. L. '15. Includes horticultural societies. —7841 C. L. '15, and pomological and kindred societies.—7885 C. L. '15.

SUB. 10. Armories owned by military companies are not exempt if rented for other purposes for a consideration, nor would such part of an armory building so owned as is used for other purposes, but the proportionate value of such leased portion of the building and of the land on which it stands would be assessable.

SUB. 11. The exemption from taxation of the property of soldiers, occupied as a homestead, is to be strictly construed and limits the homestead to one village lot, or to a forty acre parcel.—McConnell v. Twp. of Lake, 191 M. 544.

Act No. 44 of 1901 added Subdivision 11 exempting property owned by Posts of the G. A. R and W. R. C. owned, occupied and used solely by said societies. This provision was omitted by the Amendment to said Section by Act 309, of 1909 in which Act subdivision 11 was changed by exempting Homesteads of Soldiers and Sailors who served in the Civil War.

OF PERSONAL PROPERTY.

Personal property defined.

SEC. 8. (4002) For the purposes of taxation, personal property shall include:

Moneys.

1. All moneys;

Annuities, royalties.

2. All annuities and royalties;

Goods, chattels.

3. All goods, chattels and effects within the State;

Boats.

4. All ships, boats and vessels and their appurtenances belonging to inhabitants of this State, whether at home or abroad;

Goods situate without State.

5. All goods, chattels and effects belonging to inhabitants of this State, situate without this State, except that property actually and permanently invested in business in another State shall not be included;

Credits.

6. All credits of every kind belonging to inhabitants of this State, over and above the amounts respectively owed by them whether such indebtedness is due from individuals or from corporations, public or private, and whether such debtors reside within or without the State;

Shares in corporations.

7. All shares in corporations organized under the laws of this State, when the property of such corporations is not exempt, or is not taxable to itself; or when the personal property is not taxed;

Bank shares.

8. All shares in banks organized within this State, under the laws of this State or of the United States, at their cash value, after deducting the assessed value of real property owned by and assessed to such banks;

Shares in foreign corporations.

9. All shares in foreign corporations, except national banks, owned by citizens of this State;

Interest in public lands.

10. All interests owned by individuals in lands, the fee of which is in this State or the United States, except as herein otherwise provided;

Improvements on leased lands.

11. All buildings and improvements situate upon leased lands, except where the value of the real property is also assessed to the lessee or owner of such buildings and improvements;

Public vaults.

12. Tombs or vaults built within any burial grounds, and kept for hire or rent, in whole or in part, and the stock of any corporation or association owning any such tombs, vaults or burial grounds;

Omnibus clause.

13. All other personal property not herein enumerated, and not especially exempted by law;

Nursery stock.

14. All nursery stock and trees while growing on any land or in preparation for replanting or in transit;

Produce.

15. All produce, seeds and grain on hand stored in warehouse or mill, and in transit, owned within this State;

Lighting and water companies.

16. The personal property of all gas and coke companies, natural gas companies, electric light companies, waterworks companies and hydraulic companies, to be assessed in the township, village or city where the principal works are located. The mains, pipes and wires of such companies laid in or along roads, lanes, streets or alleys shall be assessed as personal property in the township, village, or city where the same are laid or placed. The personal property of street railroad, plank road, cable or electric railroad or transportation companies, bridge companies, and all other companies not required to pay a specific tax to the State in lieu of all other taxes; shall be assessed in the township, village or city where its principal business office is situated, and the track, road or bridge of any such company shall be held to be personal property and may be assessed in the township, village, or city where the same is located, used or laid.

Transportation, road and bridge companies.

History:—C. L. '97, 3831; Am. 1917, p. 8, Act 8, Eff. Aug. 10:—Am. 1921, p. 553, Act 297, Eff. Aug. 18.

SUB. 2. Annuities should be taxed according to personal value as found by the Northampton Mortality Table.—Att'y Gen'l Op. 1901, p. 126.

Leases of mineral rights in real property located outside the State of Michigan are a part of the real estate and are not subject to taxation in Michigan as personal property.—City of Saginaw v. Second National Bank, 213 M. 590.

SUB. 3. Sec. 4178-82 C. L. '15 as to taxation of copper.

SUB. 4. A vessel of a non-resident or a foreign corporation does not become subject to the taxing power of the State by engaging in business therein.—Roberts v. Charlevoix, 60 M. 197; Graham v. St. Joseph, 67 M. 652.

SUB. 6. Authorizes tax on credits held by resident trustee for non-resident beneficiaries.—Detroit v. Lewis, 109 M. 155. "Credits" includes all bills and accounts receivable, deposits, mortgages, loans, etc.

Sec. 8, Sub. 6, does not apply to money in the hands of or under the control of the owner,—it would not be a credit. Indebtedness is only allowed as an offset against credits such as bills and accounts receivable.—Att'y Gen'l Op. 1899, p. 152.

Where contracts for the sale of standing timber and for the sale of lands transfer an equitable title to the vendee, the performance of the contract being secured by the retention of the legal title in the vendor, the payments secured by the contracts are taxable against the vendor as credits.—City of Marquette v. Mich. Land & Iron Co., 132 M. 130.

Non-forfeitable and paid-up life insurance policies are not taxable. Money under the control of the person assessed is not a credit from which debts can be deducted.—Att'y Gen'l Op. 1900, p. 190.

Resident trustees holding credits for the benefit of non-residents, are within the terms of section 8, sub. 6, and section 14, sub 6.—City of Detroit v. Lewis, 109 M. 163.

The fact that the statute permitting the deduction of debits from credits, in listing personal property for taxation, has been in force during the entire history of the state, should not deter the court from determining its invalidity if convinced that such law was beyond the legislative power.—Stumpf v. Storz, 156 M. 228.

Money deposited in a bank is not assessable as chattels but as credits.—U. S. Radiator Corp., v. County of Wayne, 192 M. 449.

SUB. 7. Exemption of the corporate stock of a corporation is an exemption of its shares.—Cooley on Taxation 212. Intangible property like stock must always follow the domicile of the owner unless separated from it by positive law.—Howell v. Cassopolis, 35 M. 471.

In the construction of this section due consideration should be given to Section 11, which provides that all corporate property, except where some other provision is made by law, shall be assessed to the corporation, in the name of the corporation. See also Sec. 5 as to real property of corporations and note to Sec. 19.

If the property of a corporation is assessed to itself the shares of stock are not assessable to the individual holders thereof.—Attorney General Oren, March 19, 1900.

Shares assessable must be assessed at cash value. See 11340 C. L. '15 as to fraudulent transfer to avoid taxation. As to list of stockholders in certain corporations see 11345 C. L. '15.

Real estate of trust companies to be assessed to corporation and shares to be assessed at cash value after deducting value of real estate assessed to corporation as in case of banks.—8055 C. L. '15. Interest of shareholders in co-operative savings associations to be assessed to holders at residence in lieu of tax against associations.—9979 C. L. '15. Stock in stage company owned by other corporations to be deducted from stock of corporation owning and taxed only as capital of stage company.—69r, p. 313 C. L. '15.

A library belonging to an individual is exempt from taxation.—Patterson v. Board of Review, 125 M. 126.

CORPORATIONS WHOSE PROPERTY IS TAXABLE TO THE CORPORATION BY PROVISIONS IN ACT OF INCORPORATION: Corporations for buying, etc., cattle, etc., inc. under Act 198 of 1887.—9017n e. s. C. L. '15. Corporations for buying and selling brood animals inc. under Act 100 of 1887.—9017n e. s. C. L. '15 Manufacturing companies inc. under Act 232 of 1885.—9969 e. s. C. L. '15. Publishing companies inc. under Act 97 of 1861.—9017n e. s. C. L. '15. Newspaper and book publishing associations inc. under Act 97 of 1861.—9017n e. s. C. L. '15. Newspaper and book publishing associations inc. under Act 299 of 1865.—9017n e. s. C. L. '15. Printing, publishing and book-making companies inc. under Act 304 of 1887.—9017n e. s. C. L. '15. Bridge companies inc. under Act 83 of 1851.—8736 e. s. C. L. '15; bridge with its appurtenances, gates and toll houses to be assessed to the company as personal property in the township in which tolls shall be received. Warehouse companies inc. under Act 26 of 1867.—9017n e. s. C. L. '15. Land purchasing and improvement companies inc. under Act 196 of 1899.—9017n e. s. C. L. '15. Canal and harbor companies inc. under Act 233 of 1875 (distinguished from river improvement companies inc. under Act 149 of 1869.—8822 e. s. C. L. '15, the latter paying specific taxes).—8797 e. s. C. L. '15. Rafting and booming companies inc. under Act 16 of 1864.—8629 e. s. C. L. '15. Co-operative associations inc. under Act 288 of 1865.—9837 e. s. C. L. '15. Summer home associations inc. under Act 39 of 1899.—10062 e. s. C. L. '15. Suburban homesteads, villa park and summer resort associations inc. under Act 69 of 1887.—10085 e. s. C. L. '15 but lots sold are assessable to owners.—10093 C. L. '15. Societies for the study of literature, etc., incorporated under Act 200 of 1897.—10698 e. s. C. L. '15. Temperance Volunteers Association.—10390 e. s. C. L. '15. Grand Council Royal and Select Masters.—10424 e. s. C. L. '15. White Shrine of Jerusalem.—10427 e. s. C. L. '15. Rathbone Sisters.—10482 e. s. C. L. '15. Real Estate of Lutheran Bund.—10609 e. s. C. L. '15. Stage companies inc. under Act 29 of 1865.—69r, p. 313, e. s. C. L. '15, (see note to Sub. 7). Associations for the encouragement of the fine arts inc. under Act 233 of 1865.—10738 e. s. C. L. '15. Musical societies inc. under Act 128 of 1857.—10794 e. s. C. L. '15, (see note to Sub. 4, Sec. 7). Mutual provident associations inc. under Act 275 of 1889.—Act 84 P. A. '21. Real estate of society of marksmen inc. under Act 73 of 1869.—10116 e. s. C. L. '15. Real estate of incorporated banks and trust companies.—8028 and 8055 C. L. '15. All mutual companies and associations not having shares of stock.

Corporate property may be assessed under this section where Section 4013 C. L. '15 has failed.—Detroit Citizens Street Railway v. Common Council of Detroit, 125 M. 673.

The property of a Michigan corporation owning property within and without the State is taxable to itself, and therefore the shares of such corporation are exempt from taxation under this section.—City of Detroit v. Kresge, 200 M. 668.

SUB. 8. Bonds of the United States are not liable and any portion of the capital stock of a bank so interested is exempt; but this does not exempt shares in a national bank though the capital stock of the bank is invested in United States bonds. The cash value of the shares of stock in a bank may be determined when the stock is not regularly quoted on a stock exchange by dividing the sum of the paid up capital and the surplus by the number of shares. In assessing the shares there must be deducted from each its proportion of the cash value of the realty that has been assessed to the bank.

The shares of stock issued by a bank include in their value all of the property of the bank, including its real estate, the value of which is to be deducted for separate taxation.—Lenawee Co. Savings Bank v. City of Adrian, 66 M. 273.

The real property of a bank is assessed to the bank, and the shares are assessed to the owners at their actual cash value, after deducting the real estate from the value of the capital stock. The shares are deemed personal property, and the term "stock" is not used in connection therewith.—Att'y Gen'l Op. 1902, p. 73.

Note.—Add together capital stock, surplus and undivided profits. From total subtract assessed value of real estate owned. Divide remainder by total number of shares and result will be the value per share to be assessed as personal property.

Co-partnership ownership of private bank to be assessed under Sec. 12 in township where bank is located.—Att'y Gen'l Op. 1900, p. 198.

SUB. 9. See Graham v. Township of St. Joseph, 67 M. 652.

Sec. 8 is not unconstitutional, as violating Const. Art. 14 requiring uniformity of taxation, in that it places a tax on stock in foreign corporations when held by residents, which is taxed as capital stock in the State where the corporation was organized, and exempts from taxation stock in domestic corporations, the capital stock of which is taxed in Michigan, since it was competent for the legislature to place domestic corporations and foreign corporations in different classes for the purpose of taxation.—Bacon v. Board of State Tax Commissioners, 126 M. 22.

The question whether the stock of a foreign corporation was taxed in the state where it was organized is immaterial, since the stock of such corporation in the hands of residents acquired a situs here for the purpose of taxation. —Idem.

The word "citizen" was evidently used here in its common meaning as synonymous with "inhabitant" or "resident."—Idem.

The taxation of "all shares in foreign corporations, except national banks owned by citizens of this state," does not apply to shares in foreign corporations where the property of such corporations is situated in and taxed by this state.—Stroh v. City of Detroit, 131 M. 190.

Shares of stock in foreign corporations owned by residents of this State are not subject to taxation if the real and personal property of the corporation is situated and taxed in this State.—Att'y Gen'l Op. 1902, p. 125.

SUB. 10. See Sub. 2, Sec. 4 and Sec. 7 and notes thereto.

SUB. 11. A building erected on leased land is no part of the realty before the lease expires.—Osborn v. Potter, 101 M. 300.

Buildings are not subject to taxation as personal property when erected upon real property owned by the university of Michigan and leased to an individual.—City of Detroit v. George, 214 M. 664.

Where the record shows that the tax was against the building, it cannot be said to be a tax on the leasehold interest.—Idem.

SUB. 13. The tax law does not in express terms refer to the taxation of mortgages; but the provisions of this Sub. and of Sub. 6 leave no excuse for failure to assess their value to the owner. The note or bond and the mortgage that secures it are to be considered as one property.—Attorney General v. Sanilac Supervisors, 71 M. 16. Assessment of notes or mortgages should be at their true cash value and not at what they purport to secure.—Attorney General v. Sanilac Supervisors, 71 M. 16.

Mortgages on which taxes have been paid under section 4268 C. L. 1915 are not subject to assessment under the general tax law.—Union Trust Co. v. Common Council of the City of Detroit, 170 M. 692.

Abstract books are not subject to taxation.—Loomis v. Jackson, 130 M. 594; also Dart v. Woodhouse, 40 M. 399; Perry v. Big Rapids, 67 M. 146.

Cars owned by individuals are not exempt from taxation because run over roads charged with specific taxes. Cars owned and used by a manufacturer are properly taxable with his stock in trade as appurtenances to the business.—Comstock v. Grand Rapids, 54 M. 641. Tram railways liable to taxation under general tax law.—Detroit Street Railway Co. v. Guthard, 51 M. 180.

Shares and mortgages of foreign building and loan association held by nonresidents not taxable. All foreign corporation stock owned by residents of this State taxable.—Att'y Gen'l Op. 1900, p. 164.

The stock in trade and other appurtenances to the business of a liquor dealer are not exempt from taxation because of the payment of the liquor tax which partakes of the character of a license and is an exercise of the police power of the State.—See Sherlock v. Stuart, 96 M. 193.

The taxation of a mortgage upon real estate, in addition to the tax imposed on the land itself, is not double taxation upon the same property.—Stumpf v. Storz, 156 M. 228.

SUB. 16. Pipes of a water company laid on its own lands from pumping works to source of supply and to the city supplied, are a part of the realty and assessable accordingly and in the township where situated.—Water Company v. Frenchtown, 98 M. 431. The specific tax on pipe line companies 8610 C. L. '15, is not in lieu of other taxes.

A stock of groceries kept to furnish supplies for the crew and passengers on a line of steamboats owned and operated by a railroad company is not subject to taxation under Sec. 8287 C. L. '15.—Pere Marquette Railroad Co. v. City of Ludington, 133 M. 397.

Detroit v. Donovan, 127 M. 604. Quotes Detroit Citizens Street Railway Co. v. Detroit, 125 M. 673. "The legislature has provided that the track shall be assessed as personal property. In our opinion this term should be construed to include not only the tracks, spikes, rails and switches, but also the right to use the bed upon which they are placed."

The rolling stock of a street railway company should be assessed as personal property in place where principal office is located. Its tracks to be assessed as personal property where they are laid down.—Op. Att'y Gen'l 1899, p. 151.

The engines, dynamos, boilers and similar appurtenances of the power house of street railway are (for the purpose of taxation) parts of the realty.—Idem. The engines, boilers, dynamos and other machinery affixed to relator's land in a permanent manner is subject to municipal tax as a part of the real estate under Sec. 2.

The franchise of a street railway company, by which it acquires the right to use the streets of a municipality, should be treated as a part of the roadbed, and attaching to every part of the same, and must be treated as personal property.—City of Detroit et al. v. Donovan, 127 M. 604.

The rolling stock, tools, etc., of a street railway company are no part of its "track," but are personal property and therefore assessable where the railroad's principal office is situated.—Idem.

Complainant's officers and directors reside in Detroit where its officers have offices and transact complainant's business. The records of the official and other business of complainant are kept at Dearborn, where one bookkeeper is employed about half the time. No banking is done at Dearborn and all banking passes through the Detroit office before it is entered on the books at Dearborn. Stockholders and directors meetings are called at Dearborn and usually adjourned to Detroit. *Held:* That complainant's principal business office for the purpose of taxation, within Sec. 4002, Sub. 16 C. L. '15 is Detroit.—Detroit, Ypsilanti, Ann Arbor & Jackson Ry. v. City of Detroit et al., 141 M. 5.

The general rules and manner of assessment only apply to these corporations to the extent that they do not conflict with the special provisions of this Sub.—Opinion of Attorney General Oren, March 28, 1900.

PERSONAL PROPERTY EXEMPTED.

Exemptions.

SEC. 9. (4003) The following personal property shall be exempted from taxation, to wit:

Charitable societies.

First, The personal property of benevolent, charitable, educational and scientific institutions, incorporated under the laws of this State: *Provided,* That such exemptions shall not apply to secret or fraternal societies, but the personal property of all charitable homes of such societies shall be exempt;

Public libraries.

Second, Of all library associations, circulating libraries, libraries of reference, and reading rooms owned or supported by the public, and not used for gain;

G. A. R., Y. M. C. A., etc.

Third, Of all posts of the Grand Army of the Republic, Sons of Veterans, Unions, and of the Woman's Relief Corps connected therewith, of all Young Men's Christian Associations, and of Women's Christian Temperance Union Associations, Young People's Christian Unions and other similar associations;

Pensions.

Fourth, Pensions receivable from the United States;

Debts.

Fifth, So much of the debts due or to become due as shall equal the amount of bona fide and unconditional debts by the person owning: *Provided,* That if such person shall be the owner of credits that are exempt from taxation such proportion only of his indebtedness shall be deducted from debts due or to become due as is represented by the ratio between taxable credits and total credits owned, whether taxable or not;

Indians.

Sixth, The property of Indians who are not citizens;

Library, sewing machine, wearing apparel, etc.

Seventh, The library, family pictures, school books, one sewing machine used and owned by each individual or family, and wearing apparel of every individual;

Furniture, provisions and fuel. Proviso.

Eighth, Household furniture, provisions and fuel to the value of five hundred dollars to each household: *Provided,* No person paying board shall be deemed a householder;

Mechanics' tools.

Ninth, The working tools of any mechanic not to exceed in value the sum of one hundred dollars;

Fire apparatus.

Tenth, Of all fire engines and other implements used in extinguishing fires, owned or used by any organized or independent fire company;

Young live stock.

Eleventh, All mules, horses and cattle not over one year old, and all sheep and swine not over six months old.

Personal property used in business.

Twelfth, Personal property owned and used by any householder, in connection with his business of the value of two hundred dollars.

History: Am. 1895 p. 108, Act 25, Imd. Eff. March 20; C. L. '97, 3832;—Am. 1909, p. 760, Act 309, Eff. Sept. 1. This section virtually supersedes Act 59 of 1869 (C. L. '97, 3981) which section was expressly repealed 1915, p. 407, Act 240, Eff. Aug. 24. See Compiler's Section 4001;—Am. 1921, p. 553, Act 297, Eff. Aug. 18.

Articles imported from foreign countries and the duties paid thereon do not lose their character as imports so as to become subject to state taxation as a part of the mass of property of the State until they have either passed from the control of the importer, or been broken up by him from the original cases; and the State tax is void whether based upon them distinctly as imports or as constituting a part of the importer's property.—Cooley on Taxation 90.

Payment of a liquor tax, a local license, or similar exaction levied in pursuance of the police power of the State or minor municipalities does not exempt from taxation a stock of goods to the possession of which such payment is incident. See Sherlock v. Stuart, 96 M. 193. Exemption from execution or from any other process. penalty or forfeiture does not exempt from taxation. Abstract books referring to land titles have no intrinsic value and not taxable.—Dart v. Woodhouse, 40 M. 399; Perry v. Big Rapids, 67 M. 146; Loomis v. Jackson, 130 M. 594.

SUB. 1. ACTS INCLUDED: Act 135 of 1867, "Industrial and charitable schools," exemption limited to $100,000.—10832 e. s. C. L. '15. Act 52 of 1897, "Homes for aged, infirm and indigent men or women."—10823 e. s. C. L. '15. Act 3 of 1885, "Public art institutions."—10759 e. s. C. L. '15. Act 188 of 1857, "Mechanic's associations."—9795 e. s. C. L. '15, (see also 9819 e. s.). Act 35 of 1897, "Colonial Dames of America."—10300 e. s. C. L. '15. Act 160 of 1895 (Act 356 of 1865). "Corporations for literary and scientific purposes" (exemption limited to $100,000).—10689 e. s. C. L. '15. Act 128 of 1857, "Musical societies," (see Sec. 10801).—10794 e. s. C. L. '15. Act 169 of 1879, "Michigan State medical society."—10143 C. L. '15. Act 58 of 1877, "Eclectic medical society."—10149 C. L. '15. Act 56 of 1891, "Veterinary medical society."—10163 C. L. '15. Act 167 of 1881. "Bar associations."—10169 C. L. '15. Act 117 of 1855, "Teachers' associations."—10174 C. L. '15. Act 390 of 1855, "Institutions of learning."—10642 C. L. '15. Act 191 of 1893, "Associations for establishing scholarships in the University of Michigan."—10676 C. L. '15. Chapter 53 R. S. 1846, Libraries and lyceums.—10683 C. L. '15. Act 95 of 1869, "Polytechnic association."—10703 C. L. '15. Act 156 of 1873, "Municipal, historical, biographical and geographical societies."—10710 C. L. '15. Act 79 of 1879, "Associations for intellectual, scientific, etc., culture."—10718n C. L. '15. Charitable societies inc. under Act 166 of 1899. Act 232 of 1887, "Engineering societies."—10788 C. L. '15. Act 155 of 1879, "Benevolent societies."—10802 C. L. '15. Act 20 of 1855, "Charitable societies."—10816 C. L. '15. Act 242 of 1863, "Hospitals and asylums."—10840 C. L. '15. Act 209 of 1897, "Ecclesiastical bodies."—10889 C. L. '15. See note to Sec. 7 under head of "Exceptions". Societies for the study of literature inc. under Act 200 of 1897, not exempt.—10701 C. L. '15. 4003n C. L. '15 is superseded by this section.

Property of benevolent institutions is exempt from taxation.—City of Port Huron v. Wright, 150 M. 279.

Mortgages held by Hillsdale college not subject to taxation. They come under Sub. 1, Sec. 9. A mortgage is taxable as personal property, "Credits."—Att'y Gen'l Op. 1900, p. 177.

SUB. 3. The character of any organization claiming exemption under this provision must be in fact similar to those named in this subdivision, which is not intended to exempt the property of organizations whose name merely is similar to those designated.

SUB. 4. Pensions actually received and which have become merged with other personal property in possession of the pensioner on the second Monday in April, whether invested or uninvested, are not exempt.

SUB. 5. Does not entitle taxpayer to a reduction on account of liability under a lease for payment of rent for terms continuing into the future.—Beecher v. Common Council, 110 M. 456.

The reserve fund of a life insurance company, required by law for the protection of policy holders, represents a debt due or to become due within the meaning of the statute, and is not subject to taxation.—Mich. Mutual Life Ins. Co. v. Detroit Common Council, 132 M. 408. See deduction of reserve fund, Sec. 11.

Money under the control of the person assessed is not a credit from which debts can be deducted.—Att'y Gen'l Op. 1900, p. 190.

"Debts" is used in the first line of this Sub. as synonymous with the word "credits" as used elsewhere in the act.

A personal tax against an insolvent corporation in the hands of a receiver, upon money deposited in a bank, is void.—City of Detroit v. Hertz, 184 M. 512.

SUB. 7. A private gallery of paintings cannot be considered as exempt under this Sub. "Family pictures" evidently mean family portraits.

A library belonging to an individual is exempt from taxation.—Patterson v. Board of Review, 125 M. 126.

Summer Houses—Camp meetings—to be assessed in one body if request is made to assessor. Act 57, Laws 1901.

SUB. 8. Musical instruments are not expressly included in the exemptions under this act. In Kehl v. Dunn, 102 M. 581, it was held that a piano was not "household goods, furniture or utensils" within the meaning of the statute exempting such property from execution.

Where two families live in the same house and are joint owners of the furniture, living together as one family, the exemption does not apply to each but both as a whole.—Op. Att'y Gen'l 1901, p. 123.

SUB. 9. Tools of a dentist come within the meaning of "mechanics' tools."—Maxon v. Perrott, 17 M. 332.

SUB. 12. There are no decisions that may be a direct guide to the interpretation of this Sub., but the following under Sub. 8 of Sec. 12858n C. L. '15, are worthy of notice: "The articles need not be absolutely necessary, but must be adapted to aid in carrying on the business and actually in use for that purpose.—Kenyon v. Baker, 16 M. 373. May include lumber owned by carpenter though intended to build house for self.—Stewart v. Welton, 32 M. 59; or seed wheat by farmer.—Stillson v. Gibbs, 46 M. 215." Whether each member of a firm may claim exemption of property owned and used by firm and whether stock in trade may be held exempt under this Sub—quere.

This Sub. does not apply to household furniture but to personal property used in business and if used by two partners both would not be entitled to exemptions.—Att'y Gen'l Op. 1901, p. 123.

The legislature may exempt from taxation the stock of and mortgages held by building and loan associations (citing Hall v. Burlingame, 88 M. 436, and Supvrs. v. A. G., 65 M. 406), and Sec. 17 of the Building and Loan Act, Sec. 10011 C. L. 1915, exempting from taxation shares held by members and mortgages held by the association are expressly saved by the provisions of the general tax law of 1893.—National Loan and Investment Co. v. City of Detroit et al., 136 M. 451.

OF THE ASSESSMENT.

Annual assessment by supervisors.

SEC. 10. (4004) An assessment of all the property in the State, liable to taxation, shall be made annually in the several townships, villages and cities thereof by the supervisors of the several townships and wards, or in villages and cities where provision is made in the acts of incorporation or charter for some other assessing officer, then by such assessing officer, as hereinafter provided.

History:—C. L. '97, 3833.

Supervisors, ex-officio assessors of townships.—2111 C. L. '15. The office of supervisor in cities may be abolished by the legislature at will and its functions conferred upon other municipal officers.—Attorney General v. Cogshall, 107 M. 181.

Duty of retiring public officer to deliver books and papers of his office to successor.—13554n e. s. C. L. '15.

Personal tax cannot be assessed against a non-resident; nor can property be taxed unless it has an actual situs within the State so as to be under the protection of its laws.—Graham v. Township of St. Joseph, 67 M. 652.

Sec. 1, Chap. XXXI, providing for city assessor, is permissive merely and unless assessor is appointed as therein provided assessment will be made by a supervisor.—Ostrander v. Board of Supervisors, 111 M. 64.

CITIES GOVERNED BY SPECIAL CHARTER: Adrian, Alma, Alpena, Ann Arbor, Bad Axe, Battle Creek, Bay City, Belding, Cadillac, Charlotte, Cheboygan, Clare, Coldwater, Detroit, Eaton Rapids, Flint, Gladstone, Grand Ledge, Grand Rapids, Grand Haven, Holland, Hudson, Ionia, Ironwood, Ishpeming, Jackson, Kalamazoo, Lapeer, Lansing, Manistee, Marshall, Marquette, Mason, Menominee, Muskegon, Muskegon Heights, Negaunee, North Muskegon, Port Huron, Saginaw, Sandusky, Sault Ste. Marie, Traverse City, Three Rivers, West Bay City, Ypsilanti.

Corporate property.

SEC. 11. (4005) All corporate property, except where some other provision is made by law, shall be assessed to the corporation as to a natural person, in the name of the corporation. The place where its office is located in its articles of incorporation shall be deemed its residence: *Provided,* Its business is actually transacted at such office; but if it shall establish its principal office in any other place than the place named in its articles of incorporation, then the place where it transacts its principal business shall be deemed its residence for all the purposes of this act. If there be no principal office in this State, then at the place in this State where such corporation or agent transacts business: *Provided further,* That all the personal property of all corporations heretofore or hereafter organized under the laws of this State for the purpose of engaging in maritime commerce or navigation shall be assessed only in the city, village or township which is stated in their original articles of association or in any amendment thereof heretofore or hereafter made, to be the location of their general office for business. The property of corporations paying specific taxes shall be exempt, as to the property covered by such taxation, except when otherwise provided by law. All other property of such corporation shall be taxed under this act. In computing the taxable property of insurance companies organized under the laws of this State, the value of the real property on which a company pays taxes shall be deducted from its net assets above liabilities, as determined and shown by the last report of the Commissioner of Insurance, including in such liabilities the legal reserve required by the laws of this State, or the regulations of the insurance department, and the remainder shall be the personal property for which the company shall be assessed.

Navigation companies.

Corporations paying specific taxes exempt.

Insurance companies.

History.—Am. 1895, p. 520, Act 229, Imd. Eff. May 31;—C. L. '97, 3834;—Am. 1903, p. 384, Act 235, Eff. Sept. 17.

Where substantially all the business of the corporation is transacted. Where the treasurer and other active officers exercise powers of business management and receive and disburse funds of the corporation is the place where it "transacts it principal business."—Teagan Transportation Co. v. Board of Assessors, 139 M. 1.

The provisions relative to the time, manner and place of assessment of taxes are mandatory; but owner cannot avoid assessment at actual residence by claiming residence elsewhere for the purpose of escaping taxation.—Crittenden v. Mt. Clemens, 86 M. 220. Statement in articles of association of a corporation of the place where its office for business is located is not conclusive against the State for the purposes of taxation. A corporation must have a local habitation and cannot fix a nominal domicile in one place while its actual domicile is in another and thus avoid taxation at the place of actual habitation.—Detroit Transportation Company v. Assessors, 91 M. 382.

The amendment to Sec. 11 of the General Tax Law (Sec. 4005, C. L. 1915) by Act 229, Public Acts of 1895, providing for the taxation of property of corporations engaged in navigation is in conflict with the constitutional provision requiring a uniform rule of taxation. The constitutional provision requiring uniformity of taxation is a limitation on the power of the legislature to determine the situs for the taxation of personal property.—Teagan Transportation Co. v. Board of Assessors, 139 M. 1.

Where neither corporation nor its personal property is within the jurisdiction of an assessing officer, except by virtue of an unconstitutional statute, authorizing assessment of such property only at the place designated by the articles of such corporation as its general office, it is under no obligation to resist an assessment, and, by failing to resist, does not lose its right to object to the invalidity of the assessment when sued for the tax.—Portsmouth Township v. Cranage Steamship Co. et al., 148 M. 230.

800-801 and 69r p. 313, C. L. '15 repealed by Act 139 of 1891. Mining properties are taxable under provisions of this act.

In Michigan Dairy Company v. McKinlay, 70 M. 574, corporate property was assessed in corporate name and to its manager. Held that alternative assessments harmed no one, taxes being paid except on personal estate, for which property of the corporation was sold.

The action of the Commissioner of Insurance in fixing the amount of taxable personal property of an insurance company is conclusive and binding on the assessing officer.—Insurance premiums paid in advance are a liability of the company.—Mich. Mut. Life Ins. Co. v. Hartz, 129 M. 104.

As to taxation of insurance companies this section does not violate Section 11, Article 14, of the Constitution, which provides that the legislature shall provide a uniform rule of taxation.—Idem.

Railroad lands and only such as are held and presently used for railroad purposes, are exempt and the exemption does not apply to lands which have been acquired with a view to a future use of them by the railroad company.—Auditor General v. F. & P. M. R. R. Co., 119 M. 682.

The reserve fund of an insurance company required under Act 229 of the Laws of 1895, is subject to taxation, and is not a debt due or to become due, and is not a "liability."—Detroit Fire and Marine Ins. Co. v. Hartz et al., 132 M. 578.

Note.—This cannot apply to amended section.

A private railroad owned and operated by a firm is real property, and should be assessed in the townships where situated, and not at the terminal point of the road.—Mitchell v. Lake Twp., 126 M. 367.

For the purpose of taxation, a corporation and its shareholders are not different persons, or the corporate property and shares different property.—Stroh v. City of Detroit, 131 M. 109.

A corporation has its residence for taxation purposes at the place where its principal office is located.—City of Detroit v. Lothrop Estate Co., Ltd., 136 M. 265.

Copartnership property.

Sec. 12. (4006) For the purpose of assessing property and collecting taxes, a copartnership shall be treated as an individual, and whenever the name of the owner or occupant of property is required to be entered upon the assessment roll, if such property is owned or occupied by a copartnership, the firm name shall be used. A copartnership shall be deemed to reside in the township where its business is principally carried on. Each partner shall be liable for the whole tax.

History:—C. L. '97, 3835.

A corporation has its residence for taxation at the place where its principal office is located.—City of Detroit v. Lothrop Estate Co. Ltd., 136 M. 265.

As to partnership lands, possession of surviving partner, see Merritt v. Dickey, 38 M. 41. Surviving partner has title to personal assets of the firm until affairs of partnership are settled.—13850n C. L. '15. Assessments should be in the firm name in case of the property of a firm one member of which has died, if before the partnership business is closed out. In such case, while the legal title rests in the surviving partner, it is not his absolutely, but held by him only for the purpose of closing the partnership estate.—Blodgett v. Muskegon, 60 M. 580. In Sage v. Burlingame, 74 M. 120, a co-partnership was held liable for taxes on lands belonging to one member of the firm and assessed to the firm by direction of its agents.

Partnership property alleged to be held in joint tenancy, is held to have been properly assessed to partnership.—Hubbard v. Winsor, 15 M. 146. The provision that partnership property shall be assessed in the firm name is directory and must be construed in connection with the provision that no tax shall be held invalid on account of having been assessed in the name of some other person than the owner.—Hill v. Graham, 72 M. 659.

See Sec. 99.

Private banks owned by a co-partnership to be assessed under Sec. 12 in the township where the bank is located.—Op. Att'y Gen'l 1900, p. 198.

Board of State Tax Commissioners has authority under Section 148 of the general tax law to examine the books, papers and accounts of private banks.—Att'y Gen'l Op. 1901, p. 139.

Personal property, where assessed.

Sec. 13. (4007) All personal property, except as hereinafter provided, shall be assessed to the owner in the township in which he is an inhabitant, on the second Monday of April, of the year for which the assessment is made.

History:—C. L. '97, 3836.

In Beecher v. Common Council of Detroit, 114 M. 228, relator claimed residence in Negaunee and voted there, but owned and occupied house in Detroit for two years and was assessed in latter city on personal property which was not assessed elsewhere. Held subject to assessment in Detroit. The holding was the same in the City of Detroit v. Macier. 117 M. 76, a case similar to the foregoing, and in which the court held that the finding of a jury that one assessed for taxes was a resident was conclusive.

Title to personal property in the possession of an officer at the time fixed for assessment, under attachment by creditors, remains in the owner and is legally assessed to him.—Township of Kalkaska v. Fletcher, 81 M. 446.

A mortgage must be taxed to the owner where he lives, not where the land mortgaged is.—Latrobe v. Baltimore, 19 M. 13.

An assessment for city taxes levied by the city of Detroit is governed by the provisions of Chapter 10 of the Detroit charter and not by Sec. 13 of the Tax Law, Sec. 4007 C. L. 1915, and the city assessing officer may assess one who moves from the city before the second Monday in April of the year for which the assessment is made.—City of Detroit v. Patten, 143 M. 243.

Not intended by Sec. 13 that every assessment against personal property should be made on second Monday of April. This section provides that the person's residence on second Monday of April should be deemed to be his residence for the purpose of assessing his personal property.—Att'y Gen'l Op. 1900, p. 223.

Assessment of the personal property to the Ferguson Hardware Co. which belonged to the Ferguson Hardware Company, Ltd., gave no lien on the goods of the Ferguson Hardware Co., Ltd., which was a different company composed of different stockholders.—Chippewa Hardware Co. v. Atwood, 127 M. 338.

Where a taxpayer's assessment is upon personal property, not subject to taxation at the place where the property is taxed, the courts may review it.—Nester v. Twp. of Baraga, 133 M. 640.

All personal property located within the limits of a city is subject to assessment to the owner in such city.—Oscar Daniels Co. v. City of Sault Ste. Marie, 208 M. 363.

See Sec. 10; also 4178-82, C. L. '15.

Exceptions.

SEC. 14. (4008) The excepted cases referred to in the preceding section are as follows, viz.:

Non-residents property.

First, All goods and chattels situate in some township other than where the owner resides shall be assessed in the township where situate, and not elsewhere, if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for sale of property, shop, office, mine, farm, place of storage, manufactory or warehouse therein, for use in connection with such goods and chattels: *Provided*, That the procuring any such property to be manufactured upon contract shall be deemed the hiring a mill or manufactory within the meaning of this section;

Proviso.

Animals.

Second, All animals kept throughout the year in some township other than where the owner resides shall be assessed to such owner or the person in possession in the township where kept:

Bank stock.

Third, All shares in banks, and trust, deposit and security companies shall be assessed to their owners in the township, village or city where the bank or trust, deposit or security company is located: *Provided*, That the shares owned by a person residing in the county where the bank or trust, deposit or security company is located shall be assessed in the township or city where he resides;

Proviso.

Property of minors, etc.

Fourth, The personal property of minors under guardianship shall be assessed to the guardian in the township where he resides, and the personal property of every other person under guardianship shall be assessed to the guardian in the township where the ward resides;

Estates of deceased persons.

Fifth, The personal property belonging to the estates of deceased persons, in the hands of the executors, administrators or trustees, appointed under the last will and testament of such deceased person, or by any court of competent jurisdiction, shall be assessed to them in the township and in the school district where the deceased last dwelt, until they shall give notice to the supervisor or other assessing officer that the estate has been distributed to the legatees or beneficiaries or other persons entitled thereto. If such deceased was a nonresident of the State such property shall be assessed in the township where situated, to such executors, administrators or trustees, or to the person in possession;

Assessment to trustee, agent or pledgee.

Sixth, Personal property under the control of a trustee or agent, whether a corporation or a natural person may be assessed to such trustee or agent in the township where he resides, except as otherwise provided. Personal property mortgaged or pledged shall be deemed the property of the person in possession thereof and may be assessed to him;

Property on public lands.

Seventh, All personal property of any person situated upon, also all buildings situated and being upon the lands of the United States or of this State, shall be deemed personal property for the purposes of taxation, and assessment, and shall be assessed as personal property, to the owner or occupant thereof, in the city, village or township in which such lands are situated, and such buildings shall be subject to sale for taxes in the same manner as herein provided for the sale of personal property: *Provided*, however, It shall not be necessary to remove any such buildings for the purpose of sale;

Proviso.

Non-residents.

Forest products.

Eighth, Personal property of non-residents of the State, and all forest products owned by residents or non-residents, or estates of deceased persons, shall be assessed in the township, or ward where the same may be, to the person having control of the premises, store, mill, dock, yard, piling ground, place of storage, or warehouse where such property is situated in such township, on the second Monday of April of the year when the assessment is made, except that where such property is in transit to some place within the State it shall be assessed in such place, except that where such property is in transit to some place without the State it shall be assessed at the place in this State nearest to the last boom or sorting gap of the stream in or bordering on this State in which said property will naturally be last floated during the transit thereof, and in case the transit of any such property is to be other than through any water course in or bordering on this State, then such assessment shall be made at the point where such property will naturally leave the State in the ordinary course of its transit; and such property so in transit to any place without the State shall be assessed to the owner or the person, persons, or corporation in possession or control thereof, and in case such transit will pass said logs through the booms or sorting gaps, or into the places of storage of any person, persons, or corporation operating upon any such stream, then such property may be assessed to such person, persons, or corporation; and the person, persons or corporations so assessed for any such property belonging to a non-resident of this State shall be entitled to recover from the owner of such property, by a suit in attachment, garnishment or for money had and received, any amount which the person, persons or corporations so assessed are (is) compelled to pay because of such assessment, and shall have a lien upon said property as security against loss or damage because of being so assessed for the property of another, and may retain

Forest products in transit.

Destination without the State.

Recovery of taxes paid.

Lien.

Proviso.

possession of such property until such lien is satisfied: *Provided further,* That any owner or person interested in said property may secure the release of the same from such lien by giving to the person, persons or corporation so assessed a bond in an amount double the probable tax to be assessed thereon, but not less than the sum of two hundred dollars, with two sufficient sureties, conditioned for the payment of such tax by said owner or person interested, and the saving of the person, persons or corporation assessed from the payment thereof, and from costs, damages and expense on account of his non-payment, which bond as to amount and sufficiency of sureties shall be approved by the county clerk of the county in which the assessment is made.

History:—C. L. '97, 3837; Am. 1899, p. 47, Act 32, Imd. Eff. April 8;—Am. 1907, p. 162, Act 129, Eff. Sept. 28;—Am. 1911, p. 307, Act 182, Eff. Aug. 1;—Am. 1923, p. 256, Act 163, Eff. Aug. 30.

SUB. 1. See Township of Kalkaska v. Fletcher, 81 M. 446. Logs in camp are taxable there if there is an office and building for local business.—Ryerson v. Muskegon, 57 M. 383. See also Sub. 8.

Lumber owned by non-resident corporation and piled on dock lawfully assessed to said corporation as custodian of the dock, though part was claimed to have belonged to others. Not necessary that part claimed to have belonged to other party should have been assessed to corporation as agent.—Sec. 24 does not limit authority conferred upon assessing officer so as to require him to ascertain whether the property is held by such person as agent, guardian or otherwise.—That one who has control of the dock for the purpose of placing lumber thereon has sold part of the lumber placed upon it to another person who is authorized to remove it does not take from the former the control of that part of the dock containing the lumber sold so as to prevent the assessment of such lumber to the seller.—Spanish River Lumber Co. v. Bay City, 113 M. 181.

Personal property belonging to a partnership is assessed in the locality where it is if the firm has its place of business there.—Williams v. Saginaw, 51 M. 120.

When a commodity is shipped to this State and stored, and orders are filled from the stock so stored from time to time, the property is liable to assessment for taxes and such assessment is not an interference with inter-state commerce.—Pioneer Fuel Co. v. John Molloy, 131 M. 465.

SUB. 2. One who owns lands in contiguous parcels in adjoining townships, but resides in one and keeps part of his stock in both, should be assessed in the assessment district, for the stock, where the owner resides at the time of assessment, as governed by Sec. 17. Op. Att'y Gen'l 1903, p. 91.

SUB. 3. Real estate owned by banks to be assessed to the corporation.—8028 C. L. '15; and shares to be assessed at cash value as herein provided after deducting the value of the real estate assessed to the bank. See also, Howell v. Cassopolis, 35 M. 471. A state statute providing that shares in banks shall be taxed to shareholders, but requiring the bank to pay the taxes (Sec. 46) and authorizing it to collect from shareholders does not tax the bank, but its shares and is valid.—Black on Tax Titles 8. Bank stock certified by county clerk to supervisor who has no right to assess it may be assessed to owner where legally assessable though not certified to supervisor.—Crittenden v. Mt. Clemens, 86 M. 220.

R. S. of U. S. Sec. 5219 authorizes the taxation of national bank stock in the hands of individuals in such manner and place as the State may determine, subject only to the conditions that the rate shall not exceed that of taxation on other moneyed capital of citizens and that non-residents of the State holding stock shall be taxed in the city or town where the bank is located.

A village charter authorizing the taxation of "all property real and personal within the limits of said village" not exempt from taxation for county and township purposes does not warrant the taxation by the village of the shares of shareholders who reside in another township in the same county.—Howell v. Cassopolis, 35 M. 471.

See Sec. 120.

SUB. 5. A legatee cannot be assessed for a legacy not yet due and in the hands of the executor.—Herrick v. Big Rapids, 53 M. 554. The assessment of a guardian upon an undisputed legacy to his minor ward is invalid.—Barstow v. Big Rapids, 56 M. 35. Supervisor who assesses land to estate after administration and discharge of executors, instead of to the devisees who are the owners of the land, fails to assess as contemplated by the statutes.—Fowler v. Campbell, 100 M. 398. Sub. does not include forest products. See Sub. 8.

See "Suit for Taxes," notes to Sec. 47.—Township of Orion v. Axford, 112 M. 179.

SUB. 6. Securities belonging to a resident of the State, but in custody of an agent living in a different town, if assessed to both, assessment to owner takes precedence.—Curtis v. Richland, 56 M. 478. See Sec. 8 and "Pawn brokers," Sec. 19.

An assessment for personal property to the person having control of the property makes such person personally responsible for the tax. Where personal property is assessed to an agent, property of the agent's principal cannot be seized where the property assessed is not the property seized and not the property of the principal.—Pioneer Fuel Co. v. John Molloy, 131 M. 465.

Resident trustees holding credits for the benefit of non-residents, are within the terms of Section 8, Sub. 6, and Section 14, Sub. 6.—City of Detroit v. Lewis, 109 M. 163.

Choses in action owned by a non-resident which are in the custody of an agent in this State are not subject to taxation. Subdivision 6 refers only to personal property the legal title of which is in the agent or trustee.—Barrs v. City of Grand Rapids, 129 M. 572.

Mortgages owned by non-residents which are in the temporary custody of an agent in this State are not subject to taxation. Money collected by an agent or attorney for a non-resident client does not become taxable merely because it is in their hands on the date fixed for assessment.—Village of Howell v. Gordon, 127 M. 517.

The holder of the legal title to personal property, as distinguished from mere possession and control, under a trust instrument transferring the personalty to a trustee for the benefit of the wife and children of the testator, should be treated as the owner for the purpose of assessment.—Hills v. The City of Muskegon, 158 M. 551.

Logs, piled on ground that is leased, are assessable to the lessee, though the seller of the logs under contract with such lessee necessarily had temporary control of the premises, in order to do the loading on cars, as provided by agreement.—Gow v. McFarren, 164 M. 28; Gow v. Stoddard, 164 M. 335.

Replevin does not lie for logs levied on for taxes which were partly valid and partly invalid.—Idem.

SUB. 8. Standing trees are not forest products.—Fletcher v. Township Alcona, 72 M. 18. See also Avery v. DeWitt, 72 M. 25, and note to Sec. 2. A contract for the sale of lumber providing it should belong to the vendor until shipped, is properly assessed to vendor if before shipment.—Hovey v. Gow, 81 M. 314. Timber cut under a contract that buyer was to cut and remove within five years reverted to seller if left on land after expiration of the period.—Gamble v. Gates, 97 M. 465.

As it appears that plaintiff procured the lumber assessed to be manufactured it would follow that it was properly assessed to plaintiff, if he was the owner.—Grand Rapids Bark and Lumber Co. v. Inland Township, 136 M. 121.

Logs piled on the right of way of a private railroad owned and used by a firm engaged in the lumber business are assessable in the township where they are located at the time provided by law for taking the assessment. Logs floating in a lake, so that at the time fixed by law for assessment they were in different townships, but were all intended for use at a certain saw mill, were properly assessed in the township where the mill was located.—Mitchell v. Lake Twp., 126 M. 367.

The provision relative to payment by one in possession and his remedy has some similarity to one in the law of 1853.—See Sears v. Cottrell, 5 M. 251.

Property in the hands of a piano dealer, belonging to a non-resident corporation by which the pianos were consigned to the dealer, was validly assessed to the latter.—Crawford v. Koch, 169 M. 372.

Pianos so consigned and assessed to the dealer are not required to be assessed separately from other property owned by and asssessed to him.—Idem.

Logs, etc., in transit.

SEC. 15. (4009) All forest products in transit on the second Monday in April in each year and thereafter found in the waters or streams of this State or on the banks or shores of any lake, pond or stream of this State, when the same is not at the place where it is to be manufactured, shall be held to have a place of destination at the sorting grounds of the rafting and driving agents or booming company nearest the mouth of the stream, unless the contrary shall be made to appear by the owner or party having the same in charge: *Provided*, That all lumber, logs, timber, lath, pickets, shingles, posts, cordwood, tanbark, telegraph or telephone poles, or railroad ties, that may be piled or left in any yard, railroad reserve, or in any shed, shall not be deemed in transit, but shall be assessed to the person or corporation having control of the yard, railroad reserve, shed or place of storage where the same may be situated at the time provided by law for taking such assessment.

Proviso.

Further proviso, when assessed.

Provided further, That forest products which have been piled or left on the banks or shores of any lake, pond or stream of this state for more than six months shall not be deemed in transit, but shall be assessed as provided in the preceding section.

History:—C. L. '97, 3838:—Am. 1921, p. 419, Act 214, Eff. Aug. 18.

Logs and lumber piled along the railroad track awaiting the convenience of the owner or facilities for shipment are not in transit and are assessable where situated: and in such case the fact of the existence of contracts to load or that some event has transpired to prevent shipment or that owner intends to ship in the near future should have no weight.—Maurer v. Cliff, 94 M. 194. Logs piled during the winter on the ice of a lake close by railroad awaiting facilities for shipment by rail are not in transit, but are assessable where situated.—Plainfield Township v. Sage, 107 M. 19. Lumber piled on leased ground awaiting shipment properly assessed there.—Hood v. Judkins, 61 M. 575.

Lumber at railway station for transit merely is not taxable at that place as property in storage.—Monroe v. Greenhoe, 54 M. 9. Logs placed in river or lake for the purpose of shipment, but not for storage or for definite time nor to await a market, and which were frozen in the ice upon the lake at the time of assessment were held to be in transit, it appearing that such transit was in progress when suspended by the close of the open season.—Pardee v. Freesoil, 74 M. 81. Where forest products are on banks or shore, and not at place of manufacture, destination is at sorting grounds unless owner makes contrary to appear.—Elk Rapids Iron Co. v. Township of Helena; Same v. Township of Milton, 117 M. 211.

Logs banked into a stream, and only waiting time of high water to be floated to destination or sorting grounds, and which are treated by the owners as in transit do not fall within the provision as to lumber and logs piled or left in yard, shed or any other place in the township where the same may be at the time for assessment.—Corning v. Masonville, 74 M. 177. Further as to forest products in transit, see Boyce v. Cutter, 70 M. 539.

An assessment made on property which is not assessable is void, as on logs in transit and so known to the assessor and assessable at place of destination.—Brooks v. Township of Arenac, 71 M. 231.

Logs piled on the right of way of a private railroad owned and used by a firm engaged in the lumber business are assessable in the township where they are located at the time provided by law for taking the assessment. Logs floating in a lake, so that at the time fixed by law for assessment they were in different townships but were all intended for use at a certain saw mill were properly assessed in the township where the mill was located.—Mitchell v. Lake Twp., 126 M. 367.

See 6657 C. L. '15 relative to marking floating logs and timber. Logs bearing recorded mark shall be presumed to belong to party in whose name mark is recorded.—6660 C. L. '15.

Supervisor to view logs, etc.

SEC. 16. (4010) It shall be the duty of the supervisor of the township in which any such logs, timber, railroad ties, telegraph poles or tanbark, cut prior to the time of taking the annual assessment, may be banked or piled, or that may be in transit, to ascertain the amount of such property which may be or may have been in his township or assessment district at any time during the month of April in each year, liable to assessment, by actual view of the same, as far as practicable, and to fix the value of such property, and to assess the same to the owner thereof as herein provided.

History:—C. L. '97, 3839.
See Secs. 14 and 15.

Location of personal property.

SEC. 17. (4011) No change of location or sale of any personal property, after the first day of May in any one year shall affect the assessment made in such year. As between school districts and road districts the location of personal property for taxation shall be determined by the same rules as between assessment districts: *Provided*, That whenever the owner or occupant shall reside upon contiguous tracts or parcels of land which lie in two or more assessment districts, then the personal property of such owner or occupant shall be assessed in the assessment district where such owner or occupant resides at the time the assessment is made.

History:—C. L. '97, 3840.

Sec. 17 in part provides that no change of location or sale of personal property after the first day of May in any one year shall affect the assessment made in such year. Section 24 of the general tax law provides that the assessing officer shall make and complete an assessment roll on or before the third Monday of May in each year, and in my judgment the assessing officer would have until the third Monday in May within which to complete any assessment. Opinion Attorney General, 1900 p. 223.

Sec. 24 was amended by Act 326 of 1907, by providing that the assessing officer shall have until the first Monday in June in which to complete the assessment roll.

ASSESSMENT, HOW MADE.

Duties of assessor.

SEC. 18. (4012) It shall be the duty of each supervisor or other assessing officer as soon as possible after entering upon the duties of his office, or as may be directed and required by the provisions of any acts of incorporation of any city or village making special provision for such assessment, to ascertain the taxable property of his assessing district, and the persons to whom it should be assessed and their residences. For this purpose he shall require every person of full age and sound mind who the supervisor or assessor believes has property which is not exempt from taxation, to make and subscribe to a true and correct written statement, under oath, administered by such supervisor or assessing officer or other officer qualified to administer oaths under the laws of this State, of all the taxable property of such person, firm or corporation, whether owned by him or it or held for the use of another, and it shall be the duty of every such person, firm or corporation, to make such statement under the following form of oath, duly administered by the supervisor or assessing officer:

Shall require sworn statement.

Form of oath.

STATE OF MICHIGAN, } ss.
County of .... }

.........................., being duly sworn, deposes and says that the above is a full and true statement of all the taxable property owned by him liable to assessment in this assessing district.

(Signed)..........................

Dated this......................day of............
A. D. 19....

Subscribed and sworn to before me this............day of..................A. D. 19....

....
Supervisor (or assessor).

Proviso.

Provided, That any person having no property which is not exempt, if required to take an oath by the supervisor or assessor, may take the following oath:

No property.

STATE OF MICHIGAN, } ss.
County of .... }

.........................., being duly sworn, deposes and says that he has no property or effects liable to taxation.

Dated this......................day of............
A. D. 19....

(Signed)..........................

Subscribed and sworn to before me this............day of..................A. D. 19....

....
Supervisor (or assessor).

History:—C. L. '97, 3841; Am. 1899, p. 375, Act 239, Eff. Sept. 23.

The provision making it the duty of supervisors to require every person of full age and sound mind, etc., to make, subscribe and verify a statement of the taxable property owned by him or held by him for the use of another is mandatory.—Supervisor need not visit personally such persons, but may mail blank statement with notice to appear before him and verify the same.—Turner v. Circuit Judge, 95 M. 1.

Assessor cannot properly make an assessment against known facts.—Brooks v. Township of Arenac, 71 M. 231. Actual knowledge, however acquired, dispenses with the necessity for notice.—Jones v. Iron Co., 96 M. 98. Omission in statement does not justify the assessor in neglecting to assess property which he knows to have been omitted. It is the duty of the assessor to diligently inquire as to the taxable property within his jurisdiction.

Supervisor may require predecessor to deliver to him the books and papers belonging to the office.—Schneider v. McIvor, 58 M. 511.

One holding taxable property in more than one capacity should make a separate statement in each capacity. If he is guardian of an infant, trustee of a bankrupt estate, administrator of the estate of a deceased person and executor of another, he may be required to make a statement of his own property and also separate statements of the property held by him in his several fiduciary relations. —See Sec. 24.

When a village charter does not require an assessor to require a sworn statement of taxable property, a village tax assessed without assessor requiring such statement to be made is not invalidated thereby though the general tax law requires it for general assessment.—Lumber Co. v. Village of Oscoda, 97 M. 321.

Supervisors authorized to administer oath.—2116 C. L. '15; and may put any person under oath on any statement made to them. Authority of public officers to administer oaths in certain cases.—14631 C. L. '15.

See Secs. 100, 118, 150.

Assessors' blanks.

SEC. 19. (4013) In taking such assessment the supervisor or assessor shall use one of the following blank forms, as may be necessary:

Bankers and brokers.

Property of Bankers and Brokers.—The principal or accounting officer of every bank whose capital is not represented by shares of stock, and every private banker, broker or stock jobber shall make out and deliver to the assessor a statement which he shall verify by oath, showing:

1. The amount of money on hand and in transit; Money.

2. The amount of funds in the hands of other bankers, brokers, or other persons, subject to draft; Funds subject to draft.

3. The amount of checks and other cash items not included in either of the preceding items; Checks, etc.

4. The amount of bills receivable, discounted or purchased, and other credits due or to become due; Bills receivable.

5. The amount of bonds and stocks of every kind except United States bonds, and shares of capital stock of corporations or companies held as an investment or in any way representing assets; Bonds and stocks.

6. All other property appertaining to said business other than real estate; Other property.

7. The amount of all deposits made with them by other parties; Deposits.

8. The amount of all accounts payable, other than current deposit accounts; Accounts payable.

9. The description and value of all real estate owned by him or them. Real estate.

Manner of determining personalty.

The aggregate amounts of the seventh and eighth items shall be deducted from the aggregate amounts of the first, second, third and fourth items, and the remainder, if any, shall be assessed as moneys. The amount of the fifth item shall be assessed as stocks and bonds, and the sixth item shall be assessed the same as other similar property, and the assessor shall make a separate entry of each of these amounts (separate from the assessment of real estate) and the whole shall make up the aggregate personal assessment of such person, party or corporation.

Pawnbrokers.

For Pawnbrokers.—Every person or company engaged in the business of receiving property in pledge or as security for money or other consideration or thing advanced to pawner or pledger, shall be held to be a pawnbroker and shall be required to make a statement and return under oath, reciting:

Stock in trade.

1. The value of all stock in trade actually owned by him or them and the true cash value thereof;

Pledges.

2. The amount and value of all property held in pawn for any pawner, pledger or customer;

Amount loaned.

3. The aggregate amount of money consideration or value paid and advanced by such pawnbroker thereon.

Value of pledges.

And the amount of the true cash value of all such property, less the amount of consideration or value paid, shall be assessed as the property of such person or corporation.

Companies.

Property of Companies.—The president, secretary or principal accounting officer of any company or association, incorporated or unincorporated, except railroad, insurance and telegraph companies and banking corporations, the taxation of which is specifically provided for by law, shall make out and deliver to the assessor a sworn statement setting forth the following:

Name, etc.

1. The name and location of the company, corporation or association;

Capital stock.

2. The amount of capital stock authorized and the number of shares into which the same is divided;

Actual capital.

3. The amount of capital actually paid in;

Value of stock.

4. The market value of the stock, or if they have no market value then the actual value of the shares of stock;

Personal property.

5. The cash value of all its personal property, giving each kind separately as far as practicable;

Indebtedness.

6. The total of all *bona fide* indebtedness, except indebtedness for current expenses, excluding from such expenses all amounts paid for the purchase or betterment of said property;

Real property.

7. The description and value of all real property.

Manner of determining personalty.

The amount of the seventh item shall be deducted from the amount of the fourth item, and the balance, if any, assessed as the cash value of the personal estate. The amount of the sixth item shall be deducted from the amount of the fifth item, and the balance, if any, assessed as personal.

Vessels, etc.

Vessel and Marine Property.—The president, secretary or principal owner of all navigation or transportation companies, and each and every owner of any vessel, steamboat, wharf boat, barge or water craft, shall make out and deliver to the assessor a sworn statement setting forth:

Company name.

1. The name of the company;

Location.

2. The location of its principal office;

Capital.

3. The amount of capital stock paid in;

Value of stock.

4. The cash value of such stock;

5. The name of each and every boat or vessel owned by such company or individual, with its insurance rate and value; Name and value of boats.

6. The value of all other personal property used and belonging therewith or thereto; Personal property.

7. The actual *bona fide* indebtedness upon every such boat or vessel separately; Indebtedness.

8. The value of all real property owned by such company or person, with the description of the same, if in his assessing district: Real estate.

9. The value of all franchises, slips or docks owned or used by such company or person. Franchises, docks, etc.

The actual value of all such property after deducting the amount of the seventh item shall be deemed the assessable value of such property. Assessable value.

In case of the refusal of the president, secretary, principal accounting officer or owner hereinbefore mentioned to make the satement or statements hereinbefore recited and required, the prosecuting attorney shall cause such person, on complaint of such assessing officer, to appear forthwith before a circuit court commissioner, who is hereby authorized to issue summons therefor and to order its service and to compel the attendance of said officer or person in obedience to such summons, and to examine them under oath, and make such investigation at the expense of such bank, corporation or person as may enable such commissioner and assessing officer to obtain the information provided for in this section. Examination of persons refusing to make statement.

For General Purposes.—Every owner of property liable to taxation under the provisions of this act, being of full age and sound mind, who is a resident of this State, shall make out and deliver to the supervisor or assessor on demand, a sworn statement of all the property owned or held by him as follows: Sworn statement of property required.

REAL PROPERTY.

An accurate description of each parcel of land, with the number of acres contained therein. Realty.

PERSONAL PROPERTY—CREDITS.

1. All annuities and royalties; Annuities, royalties.

2. All credits of every kind owing to such person, whether such indebtedness is due from individuals or from corporations, public or private, and whether debtors reside within or without this State, including all deposits in banks or with other corporations or individuals; together with a statement of any part thereof that is secured by real estate mortgage on lands situated in some other State; Credits.

3. All *bona fide* indebtedness, owing by such person, giving an itemized statement in detail, how secured, and to whom owing, and the residence of such creditors and the amount due each, provided he desires to have the same deducted from his credits. Indebtedness.

PERSONAL PROPERTY—CHATTELS.

Bank shares. 1. All shares in banks organized in this State under any law of this State or the United States, and their cash value after deducting the value of the real estate taxed to banks;

Foreign stock. 2. All shares in foreign corporations, except national banks, and their cash value;

Shares in Michigan companies. 3. All shares in other corporations organized under the laws of this State when the property of such corporation is not exempt, or is not taxable to itself and their cash value;

Moneys. 4. All moneys;

Jewelry. 5. The value of all gold and silver plate, watches, diamonds and jewelry;

Furniture. 6. The value of all household furniture, over and above exemptions;

Billiard tables, etc. 7. The number and value of all billiard tables and other personal property used in connection therewith, and all other similar property owned or in possession by him;

Patent rights. 8. All patent rights and their value;

Animals. 9. The number and kinds of domestic animals not exempt, and their value;

Carriages, etc. 10. All carriages and other vehicles, and sleighs kept for pleasure or hire, and their value;

Tools. 11. All mechanical and agricultural implements and tools, and their value;

Machinery. 12. All machinery not affixed to real property, and its value;

Boats. 13. All ships, boats and vessels, whether at home or abroad and their value:

Merchandise. 14. All merchandise and stock in trade, including grain in elevators, and its value;

Logs, lumber, etc. 15. All logs, timber, lumber, posts and ties, and their value where the same is situate on the second Monday in April, as near as may be, and the distinctive marks thereon, if any, and place of destination in this State;

Other property. 16 All other goods, chattels and personal property not heretofore specifically mentioned, and their value, except property specifically exempt from taxation;

Exemptions. 17. All goods and chattels which are exempt from taxation;

Property in trust. 18. All moneys or other personal property held as assignee, attorney, executor, guardian or agent, liable to taxation under the laws of this State;

Dogs. 19. The number of dogs of all kinds over six months old;

Improvements on R. R. lands. 20. The value of all elevators, warehouses and improvements on lands, the title to which is vested in any railroad corporation, and the value of the contents.

History:—C. L. '97, 3842.

All the forms are delivered to assessors by the county treasurer. It is the duty of the assessor to furnish every person required to make such statement with a blank, and to either call for it or notify such person or company to present it to him at a specified time and place.

BANKERS AND BROKERS: Does not relate to incorporated banks, and the special rules for assessment of the property and stock of incorporated banks would not apply to the assessment of property listed under this section.

PAWNBROKERS. Personal property in pawn, being assessable to the pawnbroker, is not to be assessed to the owner.

PROPERTY OF COMPANIES: See notes to Secs. 5, 8, 11.

Section 19 relates exclusively to the statement made by persons, firms or corporations. This section, under the head of "property of companies" provides that any company or association incorporated or unincorporated, except railroads, insurance and telegraph companies and banking corporations, etc., shall make out and deliver to the assessor a sworn statement setting forth certain facts. The paragraph following Sub. 7 is a general rule authorized by the legislature for the purpose of ascertaining the personal property of a corporation for purposes of taxation where no other method is expressly provided for in the general tax law; but where in the general tax law the legislature has expressly provided how the property of certain corporations shall be assessed, then in that case the special provision governs. Sec. 19 is but a small part of the general tax law and in placing a construction upon it we must consider the whole act in so far as its several sections bear upon the particular point under consideration, and no literal construction can be resorted to that in any way violates the clear intent of the legislature. Whenever it conflicts with or contravenes any of the *express* provisions of said act in regard to the manner of making the assessment, the provision stating of what personal property shall consist and the exemptions provided for, then and to the extent of such contravention, it must give way to the more important and express provisions of the statute. For the purposes of taxation Sec. 8 expressly states what personal property shall include, and Sec. 9 as distinctly designates the personal property exemption. These sections apply to corporate property as well as to that of individuals. Under Sub. 6 of Sec. 8, and Sub. 5 of Sec. 9, indebtedness of either an individual, firm or corporation *can only be deducted from credits.* If there are no credits shown in the statement of personal property there is nothing from which the debts can lawfully be deducted. When the personal property of a corporation has been ascertained by the assessing officer for purposes of taxation, pursuant to Sec. 19, or under the authority conferred upon him by Sec. 22, or both, he then assesses the personal property to the company or corporation as provided by Sec. 11, or according to the special provisions of the general tax law that may apply to the particular corporation assessed, and the real property is assessed as provided in Sec. 8.—Opinion of Attorney General Oren, March 28, 1900.

Tax Commissioners have allowed private banks to deduct the amounts which they owed depositors from their credits, without giving names of depositors and amounts of deposits.—Op. Att'y Gen'l 1903, p. 83.

The determination of assessors and the board of review as to the cash value of the property assessed cannot be disturbed if regular, and not fraudulent.—Detroit Citizens Street R'y Co. v. Common Council of Detroit, 125 M. 673.

The special provision for the assessment of corporations in general, that the value of the stock, less the real estate, should be assessed, as well as the cash value of all personal property, less bona fide indebtedness, is unconstitutional and void, since it would result in double taxation if there were no real estate and no debts; and besides, the provision as to deducting debts is invalid, because it does not conform to the usual method of deducting debts from credits only.—Idem.

Taxation of shares of stock of a foreign corporation held by the residents of this State, the corporate property being situated and taxed in this State, is double taxation within the prohibition of the constitution requiring a uniform rule of taxation.—Stroh v. City of Detroit, 131 M. 109.

9017n, 11290 and 11338 C. L. '15 providing for report as to stock, etc., of certain corporations are held by Attorney General to be superseded by this section.

VESSEL PROPERTY: See note to Sub. 4, Sec. 8.

A stock of groceries kept to furnish supplies for the crew and passengers on a line of steamboats owned and operated by a railroad company is not subject to taxation.—Pere Marquette R. R. v. City of Ludington, 133 M. 397.

GENERAL PURPOSES: PERSONAL PROPERTY—CREDITS—Sub. 3. It cannot be presumed that the assessor can have any personal knowledge of the amount of debts subject to deduction unless statement is furnished.—First National Bank of St. Joseph v. Township of St. Joseph, 46 M. 526.

Where land has been conveyed and the standing timber is reserved by the grantor, such reserved interest may be assessed separately to the grantor as real estate.—Ward et al. v. Echo Township, 145 M. 56.

The interest of a vendor in land under contract is personalty.—Bowen v. Lansing, 129 M. 117.

Imperfect statements.

SEC. 20. (4014) The supervisor or assessor shall not accept any of the statements herein above required as final or sufficient when such statement is not properly subscribed and sworn to, but shall preserve the same as in other cases, and such statement may be used in making the assessment and as evidence in any proceeding which may arise respecting the making of the assessment of the party furnishing such statement.

History:—C. L. '97, 3843.

Wilful neglect.

Sec. 21. (4015) In every case when any person or member of any firm or officer of any corporation shall wilfully neglect or refuse to make out and deliver a true and correct sworn statement, under oath, administered by the supervisor or other assessing officer or members of the Board of State Tax Commissioners herein provided for or other officers or shall answer falsely or refuse to answer questions concerning his property or property under his control, as required by this act, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not less than thirty days nor more than six months, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment in the discretion of the court. And it shall be the duty of the supervisor, assessing officer, and each member of the Board of State Tax Commissioners whenever he is satisfied that any person liable to make such assessing statement is justly liable to such penalty, to report the case to the prosecuting attorney of the county and make proper complaint for such prosecution.

Duty of assessor.

History:—C. L. '97, 3844;—Am. 1899, p. 228, Act 154, Imd. Eff. June 23.

Assessor may secure other testimony.

Sec. 22. (4016) If the supervisor or assessing officer or a member of the Board of State Tax Commissioners shall be satisfied that any statement so made is incorrect, or if, by reason of absence or other cause, said sworn statement cannot be obtained from the person, firm or corporation whose property is so assessed, said supervisor, assessing officer or any member of the Board of State Tax Commissioners is hereby authorized and required to examine, on oath, to be administered by any of them any other person or persons whom he may have good reason to believe, and does believe has knowledge of the amount or value of any property owned, held or controlled by such person so neglecting or refusing or omitting to be examined or to furnish such statement, and such supervisor or assessing officer is hereby authorized to set down and assess to such person, firm or corporation so entitled to be assessed, such amount of real and personal property as he may deem reasonable and just.

History:—C. L. '97, 3845;—Am. 1899, p. 228, Act 154, Imd. Eff. June 23.

Statement to be presented to board of review.

Sec. 23. (4017) All the statements herein required to be made and received by the supervisor or assessor shall be filed by him, and shall be presented to the board of review hereinafter provided for, or provided for in any act incorporating any town, village or city, for the use of said board, and after the assessment is reviewed and completed by such board of review, all of the statement shall be deposited in the office of the township or city clerk, as the case may be, and shall be preserved until after the next assessment is made and completed, after which they may be destroyed upon the order of the township board or city or village council, but no such

Final disposition of statements.

statement shall be used for any other purpose except the making of an assessment for taxes as herein provided, or for enforcing the provisions of this act and any officer or person who shall make or allow to be made, wilfully or knowingly any other or unlawful use of any such statement, shall be liable to the person making such statement for all damages resulting from such unauthorized or unlawful use of such statement.

Unlawful use of statement.

History:—C. L. '97, 3846.

Where township clerk to keep records.—2117 C. L. '15. Supervisors shall keep all records and papers belonging to his office in a safe and suitable place, but not in any saloon, restaurant, public inn, hotel, place of public amusement, nor in any place where intoxicating liquors are kept or sold, or where gaming or plays of chance of any kind are carried on, or where they will be exposed to an unusual hazard from fire or theft.—2112 C. L. '15.

Statement of taxable property made for the purpose of assessment and taxation are not admissible as evidence to prove that property contained in the statements is undervalued at the suit of one to recover a tax paid under protest.—Bowman v. Montcalm Circuit Judge, 129 M. 608.

Statements of taxable property are not public records in the ordinary sense of the term.—Idem.

This section does not apply to statements made orally to the assessing officer.—Pease v. Jennings, 180 M. 682.

OF THE ASSESSMENT ROLL.

Sec. 24. (4018) On or before the first Monday in June in each year, the supervisor or assessor shall make and complete an assessment roll, upon which he shall set down the name of every person liable to be taxed in his township or assessment district, with a full description of all the real property therein liable to be taxed. If the name of the owner or occupant of any such tract or parcel of real property is known, he shall enter the name of such owner or occupant as in this act provided, opposite to the description thereof; in all other cases the real property described upon such roll shall be assessed as "owner unknown." All contiguous subdivisions of any section that are of equal value and are owned and occupied by one person, firm or corporation, and all unimproved lots in any block that are of equal value and are contiguous and owned and occupied by one person, firm or corporation shall be assessed as one parcel, unless demand in writing is made by the owner or occupant to have each subdivision of the section or each lot assessed separately; but failure to assess such contiguous parcels as entireties as herein provided shall not invalidate the assessment as made. Each description shall show as near as may be the number of acres contained in it, as determined by the supervisor. It shall not be necessary for the assessment roll to specify the quantity of land comprised in any town, city or village lot. The supervisor shall estimate, according to his best information and judgment, the true cash value of every parcel of real property and set the same down opposite such parcel. He shall also estimate the true cash value of all the personal property of each person, and set the same down opposite the name of such person. In determining the property to be assessed and in estimating such value, he shall not be bound to follow the statements of any person, but shall exercise his best judgment. Property assessed to one other than the owner shall

Assessment roll.

How made.

Contiguous lands.

Acreage.

Valuation.

Property assessed to agent, etc.

be assessed separately from his property and shall show in what capacity it is assessed to him, whether as agent, guardian or otherwise. Two or more persons not being co-partners, owning personal property in common, may each be assessed severally for his portion thereof. Undivided interests in lands owned by tenants in common, or joint tenants not being co-partners, may be assessed to the owners thereof.

History:—C. L. '97, 3847;—Am. 1899, p. 422, Act 262, Eff. Sept. 23;—Am. 1907, p. 471, Act 326, Eff. Sept. 28.

ASSESSMENT ROLL: The listing of property is clerical, but the ascertaining and determining its value is judicial, requiring the judgment of the supervisor, under his oath of office, and cannot be dispensed with in making a valid assessment roll.—Woodman v. Auditor General, 52 M. 28. Supervisors cannot authorize another to copy the roll of a previous year in so far as real estate is concerned and attach and sign the statutory certificate, as the law requires the exercise of the supervisor's best judgment.—Paldi v. Paldi, 84 M. 346. The clerical work of making a roll may be done by any person acting under the direction of the supervisor or assessor; but the determination of what property shall be listed thereon must be the personal act of the assessor and must be performed after the exercise of due diligence by him in ascertaining the taxable property in his assessing district and the ownership and value thereof. The law leaves to the assessor no discretion as to the omission of property from the rolls. None is exempt except such as is especially exempted by the law, and all property not distinctly excepted must be assessed at its true cash value. Nor can the assessor right what he believes to be a wrong done the taxpayer by some previous assessment, by omitting or undervaluing his property. Failure to list property in accordance with law is a wrong to all persons assessed, to the extent which it makes property assessed to them a larger proportion of the aggregate taxable property than it should have been; and in such case the levy would be jeopardized.—Moss v. Cummings, 44 M. 359.

Where by agreement between the supervisor and the board of review property was intentionally omitted from the assessment roll, an individual taxpayer is entitled to relief from the excessive amount of his tax.—Solomon v. Township of Oscoda, 77 M. 365. Where assessing officers have purposely in violation of law exempted property from taxation so the burden of taxation rests unequally, those who are wronged by this action (and all, except those whose property was insufficiently assessed, were wronged) are entitled to remedy against such wrong; certainly to such reduction of taxes as will make the burden no more than if favored property had been properly assessed. A wilful or intentional violation of law by omission of property from assessment, or by its deliberate under-valuation, will not be treated in equity as an accidental omission or an honest mistake in judgment.—Walsh v. King, 74 M. 350.

"(2). Two or more persons not being co-partners, owning personal property in common, may be assessed severally for his portion thereof," does not render a joint assessment of such property invalid.—City of Detroit v. Jacobs et al., 145 M. 395.

Each parcel must be assessed at its true cash value so as to protect each taxpayer.—Auditor General v. Ayer, 122 M. 136.

The assessment roll contains sufficient notice that one's property has been assessed.—Hull v. Graham, 72 M. 659.

Not necessary to indicate by dollar marks the amount of taxes in the assessment roll.—Ensley v. Coolbaugh, 160 M. 299.

The fact that land of two or more persons is assessed in one parcel, if same are of equal value, is not a void assessment.—Loud v. O'Brien, 167 M. 206.

The omission from the assessment roll of the number of acres contained in a government subdivision does not invalidate the tax.—Auditor General v Nelson, 189 M. 93.

NAME: Assignee vested with estate.—14465r C. L. '15. As to payment of debts by assignee (taxes included) see 13614n C. L. '15. Assessment in the name of other than the owner imputing ownership to the person so named, if made by the assessing officer knowingly for the purpose of defrauding or imposing an unjust tax on such person, might be assumed to be to his prejudice in the absence of a contrary showing.—Bradley v. Bouchard, 85 M. 18. A supervisor is not bound to take the statement of any person as to the ownership of land nor as to the person to whom it should be assessed, but may exercise his best judgment in determining these questions.—Meade v. Haines, 81 M. 261. See H. M. Loud & Sons Lumber Co. v. Elmer Twp., 123 M. 61.

DESCRIPTION: See Sec. 25. As to assessment of large and remote areas of wild land, see Sawyer-Goodman Co. v. Crystal Falls, 56 M. 597.

VALUATION: See Sec. 116. There is a manifest tendency in many assessment districts to put upon the property of non-residents an undue proportion of the burden of taxation. By doing this the assessor very frequently lays the foundation for a contest which is sure to result either in the property assessed escaping taxation entirely, or in an expense attending the enforcement of payment which is equal to or in excess of the tax levied. By the ordinance of 1836 it was provided that "in no case shall non-resident proprietors be taxed higher than residents" (p. 111 C. L. '15). The enactment of this provision was one of the conditions upon which Michigan gained statehood. It has never been repealed, and never can be. More than this, it is a righteous enactment and the endeavor to evade its provision has cost the State dearly. It has also done serious injury to many localities by causing the withdrawal of investments and retarding development.

Assessing officers must inform themselves as far as possible of the true cash value of each parcel and must not assess non-residents differently from others. —Sawyer-Goodman Co. v. Township of Crystal Falls, 56 M. 597.

All assessments must be on property at its cash value.—Sec. 12, Art. XIV, Constitution. This does not apply to a tax on business or occupation.—Walcott v. People, 17 M. 68; Kitson v. Mayor, 26 M. 325; nor to assessments for local improvements.—Woodbridge v. Detroit, 8 M. 274; Motz v. Detroit, 18 M. 495. This constitutional provision is as much designed to prevent over-valuation as under-valuation.—Avery v. East Saginaw, 44 M. 587.

"Taxes assessed" or "assessed" includes all the necessary steps to be taken in the legitimate exercise of taxation. The mere listing of the lands is not a completed assessment. No amount has as yet been ascertained to be a charge upon the land and no amount can be ascertained until the Board of Supervisors meet in October.—Rothchild v. Begole, 105 M. 388; see also Harrington v. Hilliard, 27 M. 271.

Assessment on a false valuation is a public wrong, and ought to be redressed in a public prosecution.—Moss v. Cummings, 44 M. 359. If the supervisor of a township in making the assessment of property for taxation shall fraudulently and with the view to impose upon an individual more than his just proportion of the public burden of taxation, assess the property of such individual above its value and relatively above the other assessments on his roll, the party aggrieved may have an injunction to restrain the collection of the excessive tax.— Merrill v. Auditor General, 24 M. 170. Intentional under-assessment of a certain class of property is invalid whether it be by agreement or in disregard of official duty.—Auditor General v. Jenkinson, 90 M. 523.

Where assessing officers and board of review omit personal property, undervalue and omit certain real estate intentionally, the object and purpose being to throw a larger taxation upon certain classes of property and to aid and benefit the working properties and the residence properties, thus discriminating and not placing the assessment upon the question of valuation at all, but attempting to carry out a scheme, the entire assessment is void as to all persons who present objections.—Auditor General v. Pendill, 123 M. 521.

The intentional omission from the tax roll of a township of $80,000 of personal property taxable therein, and the assessment of the real estate of the township at one-fourth its cash value invalidates State and county taxes levied upon lands in other townships which were assessed at cash value when the equitable amount due from a county tax cannot be ascertained.—Auditor General v. Prescott, 94 M. 190.

It is indispensable to the validity of an assessment that it should clearly show the valuation of, and the amount of taxes charged against each parcel of land.— Black on Tax Titles, 117. The value of property is to be estimated with reference to the advantages or profits that can, or may be derived from it.—Black on Tax Titles, 95.

Petitions for the reductions of valuations of townships cannot be regarded by the supervisors in the assessment of taxes.—Attorney General v. Sanilac Supervisors, 42 M. 72.

"While, in relation to most of the duties of assessors, they involve so much of judgment and discretion, and partake so much of the nature and character of judicial proceedings, that their judgment, exercised in good faith and without malice, is conclusive in their favor, yet in relation to setting real estate in the list to the owners or the persons liable to pay taxes thereon, so far as relates to the persons to whom the land is to be set and the number of acres, the assessors are bound to act in good faith, and with common care, skill and prudence, and if they so act they are not liable for mistakes or inaccuracies, but if not, they are liable to the party injured for the consequences of such mistakes, oversights or inaccuracies."—Black on Tax Titles, 122. "A discretionary power cannot excuse an officer for refusing to exercise his discretion. His judgment is appealed to, not his resentment, his cupidity or his malice. He is the instrument of the law to accomplish a particular end through specified means; and when he purposely steps aside from his duty to inflict a wanton injury, the confidence reposed in him has not disarmed the law of the means of prevention. His judgment may indeed be final if he shall exercise it, but an arbitrary and capricious exertion of official authority, being without law, and done to defeat the purpose of the law, must, like all other wrongs, be subject to the law's correction."—Merrill v. Autitor General, 24 M. 170. But the assessor is both morally and legally bound to seek the fullest light upon his duties. "He who ignorantly does an injury shall knowingly make reparation."—Miller v. Aldrich, 31 M. 408. A public officer is liable to private individuals for injuries resulting to the latter from his failure to perform ministerial duties in which the latter have a special and direct interest. He is also liable for a failure to perform duties of a judicial nature, if he neglects them maliciously.—Raynesford v. Phelps, 43 M. 342. A supervisor, when acting as assessor, is a quasi judicial officer, and in the exercise of his judicial duties he cannot be held liable in a suit at law for errors he may have made.—Meade v. Haines, 81 M. 261. When the assessor acts in good faith and intelligently exercises his best judgment, the law protects him. An individual has no right of action against an assessor to impeach his assessment, except on the ground of fraud or malice.—Moss v. Cummings, 44 M. 360. But he cannot ignore common sense and ordinary experience in discharging his duties.—Medina v. Perkins, 48 M. 67. The assessor is not required to perform impossibilities.—Peninsula Iron Co. v. Crystal Falls, 60 M. 510. But he must use due diligence.

See Secs. 14, 99, 130.

Description of realty.

SEC. 25. (4019) The description of real property may be as follows, viz.:

Sectional descriptions.

1. If the land to be assessed be an entire section, it may be described by the number of the section, township and range;

Subdivisions.

2. If the tract be the subdivision of a section authorized by the United States for the sale of public lands, it may be described by the designation of such subdivision, with the number of the section, township and range;

Irregular parcels.

3. If the tract be less than such subdivision, it may be described as a distinct part of such subdivision, or in such manner as will definitely describe the same;

Land platted.

4. In case of land platted or laid out as a town, city or village, or as an addition to a town, city or village, the same shall be described by reference to such plat and by the number of the lots and blocks thereof;

Adjoining lands.

5. When two or more parcels of land adjoin and are used and occupied together they may be assessed by one valuation;

Abbreviations.

6. It shall be sufficient to describe the real property assessed upon any roll and in all other proceedings under this act in the manner heretofore in use by initials, letters, abbreviations and figures.

History:—C. L. '97, 3848;—Am. 1915, p. 217, Act 131, Eff. Aug. 24.

SUB. 1. "Township" means surveyed township.—Manistee Lumber Co. v. Township of Springfield, 92 M. 277.

SUB. 2. "East ½" or "West ½" as used in government surveys have no reference to quantity, but fixes the dividing line equi-distant between boundaries.—Jones v. Pashby, 62 M. 614. So a "½" containing more or less than a natural acreage (such as usually occur on the north and west boundaries of townships) should be described as "fractional ½." In entering subdivisions of a section or subdivisions of a quarter-section commence at the N. E. ¼, then the N. W. ¼, then the S. W. ¼, ending with S. E. ¼.

W. fr. ½ and S. W. fr. ¼, Sec. 18, if identical, are interchangeable descriptions.—Vetterly v. McNeal, 129 M. 507.

SUB. 3. Land described on government plats by number is not properly designated otherwise.—King v. Potter, 18 M. 134. Land described as bounded on designated side by a given county drain sufficiently described.—Husted v. Willoughby, 117 M. 56. Provision for description "by designation of the lands by which it is bounded" has reference to cases in which the tract is not known by name or number and in which such a description would be the most likely to attract attention of the person interested in the payment of the tax.—Gilman v. Riopelle, 18 M. 145. See also Amberg v. Rogers, 9 M. 332. A description of a part of given tracts must clearly define the specific and determinate parts intended. Such a description as "E. part of S. E. ¼ of N. W. ¼, etc. 10 acres" should never be used unless the 10 acres intended is the E. 10 acres having a regular west boundary, i. e., bounded by a line running due north and south. If the west boundary be irregular (as by a road or stream) it should be described, say as "that part of the S. E. ¼ of the N. W. ¼, etc., lying east of (here give the west boundary), 10 acres."

An assessment of real property for taxation as "w 2/3 part of p. c. No. 331, five (5) cottages and barn (less lot deeded to John Barrow)" held not void for indefiniteness.—Harts et al. v. City of Mackinac, 131 M. 680.

An exception in a description of real property for taxation referring to a deed, presumes the deed to be of record and the description is not invalid. Idem.

Description of land in tax roll for D——— township, as a given subdivision of Sec 8, T. 6 R. 6, there being but one township 6, range 6, in such township, is sufficient, though there are four townships in the State numbered 6, range 6.—Dumphey v. Auditor General, 123 M. 354.

Where center twenty-five feet of lot was charged back as indefinite, a reassessment on definite description was invalid since the description in the first assessment was too indefinite to form the basis of a tax.—Audtior General v. Smith, 125 M. 576.

An assessment did not except a right of way over land subsequently sold for taxes. Held not to invalidate decree. Flint Land Co., Lt'd v. Godkin et al., 136 M. 668. But before decree a tax may be canceled when no exception of railroad right of way is made. See Auditor General v. Pendill, 123 M. 521.

A description should afford means of identifying the land and should be sufficient not to mislead the owner.—Powers v. Corry. 184 M. 630. Assessment in this case made prior to the amendment by Act 131 Public Acts of 1915.

The court may take judicial notice that unplatted lands of governmental subdivisions are frequently, if not usually, assessed without reference to the streets.—Roberts v. Auditor General, 217 M. 695.

SUB. 4. Lots and blocks defined.—Anderson v. Baughman, 7 M. 76. Burrowes v Gibson, 42 M. 121; Jackson v. Sloman, 117 M. 126. See note Sub. 7. In making the assessment roll care should be taken to place each description under its proper heading. City or village property must be placed under its proper heading, particular attention being paid to the several subdivisions, each of which should be distinctly described. In townships the section number should be written opposite each description, and not omitted or indicated by ditto marks.

The assessment roll shall contain a sufficient description of each parcel taxed. The object of this provision is threefold: 1st—It is designed to inform the owner of the claim upon his property; 2nd—That if the taxes are not paid intending purchasers may know what property. Black on Tax Titles, Sec. 112.

Lands situated in "Hoyt's plat of East Saginaw" held to be sufficiently described as in "Hoyt's plat, City of Saginaw," the two cities being consolidated. —Wilkin v. Keith, 121 M. 66.

A tax deed describing property as "lots 163, 164 of section 33, village of P., according to the plat thereof," was indefinite and uncertain, in view of evidence that there were several lots on section 33 that were numbered, respectively, 163 and 164.—Sleight v. Roe et ux., 125 M. 585.

May be by proper abuttals, although the better description, if not the necessary one, is by reference to the plat and by the number of the lot and block as given on the plat, together with such other descriptive facts as may be practicable *and* essential for the purpose of identification.—Burrowes v. Gibson, 42 M. 121.

"Lots 55 to 58 inclusive of Sullivan and Russell's Sub., of west 944 acres of Private Claim, 40 North of Michigan Ave.,"—The specific defect claimed is in the description "944 acres," whereas the plat shows it to be 9 44-100 acres. The omission of the decimal point is claimed to be fatal. The court says, "The description is unmistakable and therefore valid".—Jackson v. Mason, 143 M. 355.

Land was described as situated in "Section 31, plat of Johnson City, town 25 north range, 13 west, Village of Thompsonville, State of Michigan, County of Benzie." *Held:* That in view of the particular description the words "plat of Johnson City" were surplusage and did not render the description doubtful.—Haywood v. O'Connor, Trustee et al., 145 M. 52.

Plats.—3350-67 C. L. '15.

SUB. 5. A dwelling house with the land and appurtenances occupied with it, a warehouse so occupied, a farm or other parcel of real estate let to the same tenant by one and the same lease, parcels detached from each other and used and occupied for different purposes, may respectively be regarded as separate and distinct estates, to be distinctly valued and assessed.—Shaw C. J., in Hayden v. Foster, 13 Pick. 492, 497. In the case of adjacent unimproved lands, assessment as one parcel of such land as was purchased by the owner as one parcel (if the entire be within the assessing district) is sufficient, though by the government survey it was divided. While lands may lawfully be divided into the lowest legal subdivisions, this should be avoided where contiguous lands are known to belong to one owner. Separate and distinct parcels must be assessed and valued separately, and omission to do so is not a mere irregularity. But parcels in two sections should not be assessed together, even though contiguous and owned and occupied by the same person.

When several platted lots have been assessed as one description a decree against the same as one parcel is a determinative of the legality of the assessment. (Sec 66 provides that the court may apportion the taxes; and Sec. 53 that a part owner may pay on his part.)—Kneeland v. Hull, 116 M. 55.

See Sec. 24.

SUB. 6. Descriptions do not identify of themselves but only furnish the means of identification.—Wiley v. Snyder, 34 M. 60. Falsity in description affects all subsequent proceedings. A tax sale of property that is misdescribed in the assessment roll will be wholly invalid.—Black on Tax Titles, 112. Descriptions must be so definite and certain as not to require extrinsic proof. The requirements as to description in tax proceedings are not only aimed at securing an identification of the property that will be certain but are designed to afford notice to the owner, and therefore should be such as not to mislead by departure from strict accuracy.—Jackson v. Sloman, 117 M. 126.

Where acreage property is described the acreage must be correctly given. Exceptions noted in the description must be clearly defined. Failure to do this is the occasion of much trouble in tax records. If there is exempt property within the area described—for instance, if a railroad crosses the land, or a schoolhouse site is located thereon, the exception must be distinctly designated and the acreage assessed correctly stated.

Properties which are crossed by railroads should not be assessed as one parcel without any reference to the railroad. There should be excepted from these assessments the right of way of the railroad company. It would be safer to assess that portion of the forty lying east or west of north or south of the railroad, as the case may be, separately, treating them as separate parcels of land, there being another owner or occupant coming in between. At all events they should except the right of way of the railroad company. That the railroad company is an occupant of this land there can be no question, and therefore land thus severed should not be assessed as one parcel. It is certainly safer to treat land thus crossed as different parcels.—Opinion of Hon. John W. Stone, Circuit Judge 25th Judicial District; quoted in Auditor General v. Pendill, 123 M. 521.

"Thence running to the rear of the said" land does not necessarily mean that parcel is bounded by the rear line of the land referred to, but may simply indicate the direction of the boundary; as if the word "toward" were used instead of "to" and is therefore indefinite.—Moran v. Lezotte, 54 M. 83.

"Any description by which they may be known" should be understood to mean description by which any person may know the land. The owner may be, in the common acceptance of the term, a stranger to the land, and the description must be given with sufficient particularity to afford means of identification. One of the worst forms of description in common use is that in which a piece of land is described as "bounded north by Savage, east by Davis, south by Shier and west by Schaufele." There are hundreds of such descriptions on the records of delinquent tax lands, the same land being held for various years, but described as bounded by the lands of different persons as changes of ownership have occurred, and it is impossible to bring the several years together in the absence of the records which show changes of ownership. While doubtless many of those descriptions are not fatally defective, they are the occasion of much trouble and uncertainty and should be avoided as far as possible. A much better description would be to start from a point so described as to be geographically located with certainty and from there to go from point to point by natural stages until the starting point is again reached. Description of building is no description of the lot.—Lefevre v. Mayor, 2 M. 586. Description must be sufficient to fit and comprehend the property.—Eggleston v. Wagnoer, 46 M. 618. Land described "less lots sold" cannot be held bound.—Hubbard v. Winsor, 15 M. 146. But where a misdescription of lands in an assessment roll was caused by following a list furnished by the parties themselves, they were not allowed to claim it as a ground of equitable relief and were remitted to their legal remedies.—Ibid. Further as to description, see Mann v. Carson, 120 M. 631.

Lands may be designated by any description by which they may be known.—Hildie v. Eckhart, 203 M. 346. Note: This decision is based upon the form of a description assessed prior to the amendment of this subdivision by Act 131 of 1915.

SUB. 7. A deed is not invalid because of the description of the land being in figures and well understood abbreviations. But abbreviations, if used, must be such as are in common use.—Harrington v. Fish, 10 M. 415; Sibley v. Smith, 2 M. 486. Abbreviations unusual in land descriptions (as "q" or "qr" for "¼") must be avoided. As to fractional description see Donahue v. Klassner, 22 M. 255; AuGres Boom Co. v. Whitney, 26 M. 42; Dart v. Barbour, 32 M. 271. Further as to abbreviations in roll see Auditor General v. Sparrow, 116 M. 574.

See Sec. 99.

Assessment of property as certain lots in "Newells E. and C. plat" held not void for indefinite description as the abbreviation was well known and the property could be definitely located on the plat. Auditor General v. Fleming, 142 M. 12.

A description of land on an assessment roll by abbreviation is valid if the description is sufficiently definite to be identified by a competent person, and point out the particular land with certainty.—Auditor General v. Fleming, 142 M. 12.

Where a decree of the circuit court established the validity of a tax, a deed based thereon could not be attacked collaterally, in a suit to quiet title, because of a change in the description of the premises authorized by a local act.—Heethuis v. Kerr, 194 M. 689.

Where the owners of lots fronting on a lake convey the same to other parties, reserving that portion of the lots covered by water, and assessment of the portion of the lots covered by water is made against the owners by a proper lot number under the following abbreviations "Rip'in r'g't", such abbreviation was a proper description of riparian rights.—Newaygo Portland Cement Co. v. Twp. of Sheridan, 137 M. 475.

The word "half" when used in describing land should be construed as meaning "half in quantity".—Jones et al. v. Robinson et al., 62 M. 614; Hartford Iron Mining Co. v. Cambria Mining Co., 80 M. 491.

Personal property.

SEC. 26. (4020) The description of personal property on said roll may be made by using the word "personal," except in cases heretofore mentioned, or in the assessing of any dog tax authorized by law, in which case the kind of property assessed shall be properly designated upon the roll.

History:—C. L. '97, 3849.

Enumeration of personal property is surplusage and does not affect the validity of the assessment.—Comstock v. Grand Rapids, 54 M. 641.

Dog tax assessed under Act 48, 1901.

"Cash value" defined.

SEC. 27. (4021) The words "cash value," whenever used in this act, shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale. In determining the value the assessor shall also consider the advantages and disadvantages of location, quality of soil,

Location and appurtenances.

quantity and value of standing timber, water power and privileges, mines, minerals, quarries or other valuable deposits known to be available therein and their value.

History:—C. L. '97 3850.

The constitutional provision requiring assessments to be made on property at its cash value means not only what may be put to valuable uses, but what has a recognized pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it.—Perry v. Big Rapids, 67 M. 146. Assessments upon anything but the true cash value of property are illegal and in violation of the assessor's official oath.—Wattles v. Lapeer, 40 M. 624.

In determining the true cash value of land the value of standing timber should be included.—Fletcher v. Township of Alcona, 72 M. 18. The rule should be applied universally. If another than one holding title to the land or possession thereof claims an interest in standing timber or other products or deposits on the land, the owner or person in possession must secure relief from the burden of taxation through mutual agreement between himself and the owner of such products or deposits; the assessor cannot consider such claims.—Curry v. Lake Superior Iron Co., 190 M. 445.

The determination of assessors and the board of review as to the cash value of property assessed cannot be disturbed if regular, and not fraudulent.—Detroit Citizens' Street R'y Co. v. Common Council of Detroit, 125 M. 673.

A charter provision that "In assessing lands within the city which are held and used merely as farming lands, or which are wild and unimproved, the supervisor shall assess such lands at their true cash value, considering the location of the same, and not according to any prospective or supposed value of such lands as city property" is in violation of article 14, section 12 of the Constitution, providing that all assessments shall be on property at its cash value.—Saltonstall v. Board of Review, 132 M. 196.

Each parcel must be assessed at its true cash value.—Auditor General v. Ayer, 122 M. 136.

See Secs. 2, 74.

The ownership of undiscovered minerals constitutes an estate in the land.—Hansen v. Hall, 167 M. 7.

In fixing the value of a power plant and dam used in connection with the power plant, the nearness of the dam to the power plant was properly taken into consideration in fixing the value of the property on which the dam was located.—Alpena Power Co. v. Caledonia Twp. 194 M. 622.

The determination by tax assessors of the cash value of a mine based upon the product and profits of the mine for a course of years preceding the assessment, although greater than the price of the recent sale of the mine, will not be disturbed by the courts in the absence of direct proof of fraud on the part of the assessing officers.—Cleveland Cliff Co. v. Republic Twp., 196 M. 189.

OF THE BOARD OF REVIEW.

Township meeting.

Election of members of board of review.

Vacancy, how filled.

Quorum.

SEC. 28. (4022) At the annual township meeting held on the first Monday of April, in the year eighteen hundred and ninety-four, there shall be elected by ballot, on the regular township ticket, two taxpaying electors of the township, who shall be owners of land in said township, to serve as members of the board of review, one of whom shall be elected for one year and one for two years, and annually thereafter one member shall be elected for two years, who shall take the constitutional oath of office as other township officers. The supervisor and the two electors so elected shall constitute a board of review for such township. The township board may temporarily fill any vacancy which shall occur in said membership of said board of review, but no member of such township board shall be eligible to fill such vacancy. A majority of said board of review shall constitute a quorum for the transaction of business, but a less number may adjourn from day to day and a majority vote of those present shall decide all questions.

History:—C. L. '97, 3851; Am. 1901, p. 177, Act 129, Eff. Sept. 5.
For board of review in cities see Sec. 107.

Time of meeting.

SEC. 29. (4023) On the Tuesday next following the first Monday in June, the board of review of each township shall

Supervisor to submit roll.

Board to correct and perfect roll.

Supervisor's roll to stand as approved.

Exceptions.

meet at the office of the supervisor, at which time the supervisor shall submit to said board the assessment roll for the current year, as prepared by him, and the said board shall proceed to examine and review the same, and during that day, and the day following, if necessary, said board, of its own motion, or on sufficient cause being shown by any person, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from such assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. The board shall pass upon each valuation and each interest, and shall enter the valuation of each, as fixed by it, in a separate column. The roll as prepared by the supervisor shall stand as approved and adopted as the act of the board of review, except as changed by a vote as herein provided. If for any cause a quorum does not assemble during the days above mentioned, the roll as prepared by the supervisor shall stand as if approved by the board of review.

History:—C. L. '97, 3852; Am. 1907, p. 472, Act 326, Eff. Sept. 28.

Board action must be joint, not individual.—Cooley on Taxation, 257. Boards are as closely limited to the exercise of the authority definitely given them by statutes as are individual officers. The board of review must act strictly within the authority given them by the tax law.—They derive no authority from any other source and have none to make any changes in the assessment roll not specifically given them by said act. For instance, they have no authority to set aside an assessment upon the ground of want of power in the municipality levying it.

No legal agreement can be made with the board of review by which the whole or any part of a township shall be assessed at a uniform value.—Auditor General v. Ayer, 122 M. 136.

Whether an assessment is excessive is a question for the board of review and not for the courts.—Caledonia v. Rose, 94 M. 216. One is not bound to notice or appeal from an assessment of personal taxes against him if jurisdiction to assesss them does not exist.—Williams v. Saginaw, 51 M. 120. When a person is over-taxed for some property and under-taxed for other property on the same roll for an equal or greater amount he is not entitled to abatement. He can claim relief only if the assessment is injurious to him.

The board of review are not required to base their conclusions upon sworn testimony only. They may act upon their own personal examination or upon any evidence satisfactory to them.—Griswold v. School District, 24 M. 262. In Dryer v. Board of Review, Mich. Mand. Cases 1283, mandamus issued to compel respondents to place upon the assessment roll so much of certain real estate belonging to incorporated body whose property used for the purposes of its incorporation was exempt, as was not so used but rented for mercantile business.

Where board of review intentionally omitted personal property and real estate, and greatly under-valued certain personal property, a judgment holding the whole tax void as to all who had filed objections was proper.—Auditor General v. Pendill, 123 M. 521.

The board of review having met and acted on the grounds of value at the time fixed by statute it is a mere irregularity, not making the taxes void, that the entries of the amount fixed were subsequently made.—Auditor General v. Ayer, 122 M. 136.

The provision requiring the board of review to meet upon specified days for review, etc., is mandatory.—Caledonia v. Rose, 94 M. 216. See also Secs. 99, 130, 150. For time of meeting see also Secs. 30 and 32.

The board may of its own motion and without a showing of cause or notice to the tax-payer, increase the valuation of any property assessed.—Petoskey & Bay Shore Gas Co. v. City of Petoskey, 162 M. 447.

Record of increase in valuation by the board of review, made by a member of said board and preserved by him in the form of memoranda, later filed with the clerk and prepared in typewritten form for permanent record in his office, held a sufficient record of the action of the board.—Story & Clark Piano Co. v. Hilderink, 189 M. 123.

All corrections as to valuation made by the board, of its own motion, must be made at its first meeting.—Auditor General v. Stone, 190 M. 93.

Second meeting.

SEC. 30. (4024) Said board of review shall also meet at the office of the supervisor on the second Monday in June at nine o'clock in the forenoon, and continue in session during the day and the day following. Such board shall continue its sessions at least six hours each day, and at the request of any person whose property is assessed thereon or of his agent, and on sufficient cause being shown, shall correct the assessment as to such property, in such manner as in their judgment will make the valuation thereof relatively just and equal. To that end said board may examine on oath the person making such application, or any other person, touching the matter. Any member of said board may administer such oath. After said board shall complete the review of said roll, a majority of said board shall endorse thereon and sign a statement to the effect that the same is the assessment roll of said township for the year in which it has been prepared and approved by the board of review. Said statement may be in the following form, viz.:

Corrections on request.

Evidence under oath.

Endorsement of roll.

Form.

"Assessment roll of the township of .... for the year 19...., as approved by the board of review.

Dated ....

....

....

....

"Board of Review."

History:—C. L. '97 3853:—Am. 1907, p. 473, Act 326, Eff. Sept. 28.

A tax-payer has the right to assume that the board of review will remain in session the full statutory time and to arrange to be present at his pleasure within that time: and if he is prevented by failure of the board to perform this duty, the tax levied against him is void.—Caledonia v. Rose, 94 M. 216. Provision that board shall "continue in session during the day and day following" is mandatory; and where property owner is deprived of a hearing by the illegal adjournment of the board the first day, there is no jurisdiction to levy taxes on his property.—Auditor General v. Chandler, 108 M. 569; Twp. of Hampton v. Wespinter, 189 M. 29. Where owner appeared at place of meeting of board of review on fourth Monday in May but failed to attend session on following day, he cannot be heard to complain on ground that he was deprived of his day in court. Tax is not rendered void because of failure of board to convene on first day.—Wright v. Auditor General, 118 M. 556. Final action by the board of review cannot be had after the expiration of the time the statute allows the board to be in session.

The tax-payer must be allowed, before the assessment roll is completed, the opportunity of seeing what assessments have been made against his property, and the privilege of showing that the proposed assessment is for any cause illegal or unjust.—Woodman v. Auditor General, 52 M. 28. Tax-payers cannot lawfully be deprived of rights to hearing by board of review.—Common Council v. Smith, 99 M. 507. Any person may have redress against unjust or unequal valuation of property on the roll to his injury, whether by over-valuation of his own property or an under-valuation of that of others. Parties whose property is to be taken by summary tax proceedings are entitled as of right to be heard at some stage of the proceedings before the tax becomes an established charge against them or their property.—Thomas v. Gain, 35 M. 155.

When the board of review has reduced an assessment, its action is final and cannot be changed, if at all, without giving the party a further hearing. The new increase is an excess of jurisdiction and no valid action can rest on it, against the party so injured.—Phillips v. Township New Buffalo, 64 M. 683. Where board of review changes valuations after its authority to do so has expired, the entire tax will be rendered invalid. Omission of valuation in roll by supervisor will not render tax invalid where board of review seasonably supplied the defect. But a change of valuations by the board of review upon its own motion after the expiration of the time allowed for that purpose invalidates the entire tax; and the addition of land to a roll by the board after the expiration of such period invalidates the tax as to the lands so added.—Auditor General v. Sparrow, 116 M. 574.

The board of review at its second meeting has no right, on its own motion, to correct the valuations as shown in the assessment roll.—Auditor General v. Stone, 190 M. 93.

Each case is heard by itself, and when disposed of the party is no longer under obligations to watch proceedings of the board.—Griswold v. School District, 24 M. 262. The board cannot refuse to consider the claim of a taxpayer if presented in writing or by an agent or attorney, because he does not appear in person and submit to an examination; but if it has good reason for so doing, it may declare the proof adduced insufficient.

Plaintiff did not appear before the board of review and object to a void tax and the only evidence that the tax was paid under protest was the endorsement made on the margin of the tax roll "Paid under protest" and the same statement appearing in the tax receipt. No levy was made or threatened and the tax was not paid under duress. The property was taxable in the township where the assessment was made. *Held:* That plaintiff could not recover the tax paid.—Traverse Beach Association v. Elmwood Township, 142 M. 78, 297.

A taxpayer must avail himself of his right to appeal to the board of review or he will have no standing in court when seeking there for abatement of tax or redress of a wrong done him by the assessment, except when he can show fraud or bad faith on the part of the assessor.—Peninsular Iron Co. v. Crystal Falls, 60 M. 510; Meade v. Haines, 81 M. 261; Brown v. Grand Rapids, 83 M. 101; Smith v. Carlow, 114 M. 67. If a tax-payer does not have his assessment corrected and perfected when it is in his power to do so, his failure must be assumed to admit its correctness.—First National Bank of St. Joseph v. Township of St. Joseph, 46 M. 526; Detroit River Savings Bank v. Detroit, 114 M. 81. Boards of review are the proper tribunals for the correction of unjust asssessment, and parties will not be heard in the courts until they have exhausted their remedy before these tribunals.—Michigan Savings Bank v. City of Detroit, 107 M. 246; Fletcher Paper Co. v. City of Alpena, 172 M. 35.

Notice of review of assessments required by charter and statutory provisions may be by publication and need not name the owners of lands affected.—Palmer v City of Port Huron, 139 M. 471.

One cannot complain that the assessment was in name of wrong person, or of any other irregularities which board of review might have corrected had application been made to it.—Hinds v. Township of Belvidere, 107 M. 664; Audtior General v. Keweenaw Asso., 107 M. 405. Where property owner rightfully assessed examines assessment at time of meeting of board of review and expresses himself satisfied therewith, one who succeeds to his rights and obligations in the premises cannot complain that the assessment is too high or was not properly reviewed.—Hamilton v. Ames, 74 M. 298.

Mandamus will not be granted to compel the assessment of taxable property which has been omitted from the roll, at a time when the owner will be deprived of right of a review of the assessment.—Maurer v. Cliff, 94 M. 194.

The presumption that all necessary papers were made and filed is overcome by the production of the assessment rolls with an unsigned certificate attached, and the showing is fatal.—Dickinson v. Reynolds, 48 M. 159. No presumption that roll contains certificate, where roll introduced lacks certain leaves and the certificate.—Newkirk v. Fisher, 72 M. 113. The necessity for the several sheets of the assessment rolls being properly attached to each other, by sewing or binding, is evident.

Certificate signed by majority of the board is sufficient.—Mills v. Township of Richland, 72 M. 100. The proper certificate duly signed and pasted to the roll is compliance with the statute.—Darmstaetter v. Maloney, 45 M. 621. That certificate is dated on last review day does not necessarily show that it was premature.—Yelverton v. Steele, 36 M. 62. As to date of certificate see Dickison v. Reynolds, 48 M. 159.

Statutory certificate of taxing officers cannot be contradicted in collateral proceedings.—Tompkins v. Johnson, 75 M. 181.

Failure to apply to the board of review to correct an assessment does not estop the taxpayer from contesting an absolutely void asssessment, the property not being subject to taxation.—Woodmere Cemetery Association v. Twp. of Springwells, 130 M. 466.

A tax-payer must be presumed to know the powers and duties of the board of review, and the time fixed by the statute for its meeting; and he cannot excuse his failure to appear before that body by showing that he was out of the State.—Hinds v. Twp. of Belvidere, 107 M. 664.

By failing to attend the meeting of the board of review, or file objections to the assessment, the tax-payer did not preclude himself from the remedy afforded by equity.—Van Zanten v. City of Grand Haven, 174 M. 282.

Where a tax-payer's assessment is upon personal property, not subject to taxation at the place where the property is taxed, the courts may review it.—Nester v. Township of Baraga, 133 M. 640; Rice v. City of Muskegon, 150 M. 679.

See Sec. 99.

Where property subject to a tax is purchased after final action by the board of review for purposes which render it exempt from taxation, it is the duty of the purchaser to pay the tax. Iron Mountain Public Schools v. O'Connor et al., 143 M. 35; Triangle Land Co. v. City of Detroit, 204 M. 442.

A resolution of the common council of a city, directing the board of review to make reductions in the assessment roll is illegal and of no effect.—Fletcher Paper Co. v. City of Alpena, 160 M. 462.

One is not bound to appear before the board of review to protect himself against a void tax which the township authorities had no jurisdiction to levy against him.—Rapid Railway Co. v. Schroeder, 190 M. 684.

Completed roll valid.

SEC. 31. (4025) Upon the completion of said roll and its indorsement in manner aforesaid, the same shall be conclusively presumed by all courts and tribunals to be valid, and shall not be set aside except for causes hereinafter mentioned. The omission of such indorsement shall not affect the validity of such roll.

History:—C. L. '97, 3854.

Certiorari will not lie to bring tax proceedings before the supreme court for review.—Whitbeck v. Hudson, 50 M. 86; Hudson Common Council v. Whitney, 53 M. 158; Burnett v. Drain Commissioner, 56 M. 314.

Certificate of equalization does not form a part of assessment roll.—Tweed v. Metcalf, 4 M. 579. But must be written or printed on or affixed thereto.—Sec. 34.

The too frequent practice of indicating changes made by the board of review by mere note made of the new valuation, or of the correction of an erroneous description cannot be too strongly deprecated. Such correction is in no proper sense a "completion" of the roll. The law does not in express terms provide that the board endorse their amendment of the roll in ink, nor that they foot it and place the total amount at the foot of the several columns; but anything less than this lacks much of "completion," nor should the concluding sentence of this section be made the excuse for failure to indorse the roll, as provided in Sec. 30.

The omission of the endorsement of the clerk of the board of review upon the assessment roll does not affect the validity of the assessment.—City of Yale v. Michigan Mutual Fire Insurance Co., 179 M. 254.

Absent members.

SEC. 32. (4026) If from any cause a quorum shall not be present at any meeting of the board of review, it shall be the duty of the supervisor, or, in his absence, any other member of the board present, to notify each absent member to attend at once, and it shall be the duty of the member so notified to attend without delay. If from any cause the second meeting of such board of review herein provided for is not held at the time fixed therefor, then and in that case it shall meet on the next Monday thereafter, and proceed in the same manner and with like powers as if such meeting had been held as hereinbefore provided.

Second meeting.

History:—C. L. '97, 3855.

Records of board.

SEC. 33. (4027) The supervisor or clerk of said board of review shall keep a record of the proceedings of the board and of all the changes made in such assessment roll, and shall file the same with the township or city clerk with the statements made by persons assessed.

History:—C. L. '97, 3856.

Failure to keep record cured by Sec. 99 if no injury has resulted to persons assessed.—Auditor General v. Buckeye Iron Co., 132 M. 454.

Equalization by supervisors.

SEC. 34. (4028) The board of supervisors in each county shall, at their session in June in each year, examine the assessment rolls of the several townships, wards or cities, and ascertain whether the real and personal property in the respective townships, wards or cities has been equally and uniformly assessed at true cash value. If, on such examination, they shall deem such assessments to be relatively unequal, they shall equalize the same by adding to or deducting from the valuation of the taxable property in any township, ward or city, or townships, wards or cities, such an amount as in their judgment will produce a sum which represents the true cash value thereof, and the amount added to or deducted from the valuations in any township, ward or city, shall be entered upon the records. They shall also cause to be entered upon their records the aggregate valuation of the taxable real and personal property of each township, ward or

Aggregate valuation.

Corrections of descriptions.
Certification.
To whom delivered.

city in their county as determined by them. The board shall also make such alterations in the description of any lands upon such rolls as may be necessary to render such description conformable to the requirements of this act. After such rolls shall have been equalized, each shall be certified to by the chairman and clerk of the board and be delivered to the supervisor of the proper township, ward or city, who shall file and keep the same in his office.

Appeal.
Petition.
What to show.
Investigation of complaints.
May summon supervisors.
To make deductions, etc.

Any supervisor of any township or city who considers his township or city aggrieved by the action of the board of supervisors of which he is a member, in equalizing the valuations of the several townships, wards or cities of the county, may appeal from such determination to the board of State tax commissioners in the manner herein provided. Whenever any such supervisor desires to appeal from such determination by the board of supervisors, he shall within five days after such determination is made or within five days after adjournment of the board of supervisors, file with the clerk of the said board of supervisors a written or printed petition which shall set forth in detail his reasons for taking such appeal. The said petition shall be signed and sworn to by the supervisor taking the appeal; shall show that the equalization as made by the said board of supervisors was objected to by certain members thereof; that a certain township, ward or city, as the case may be, has been discriminated against in such equalization, and shall pray that said board of State tax commissioners proceed at its earliest convenience to review the action from which appeal is taken. It shall be the duty of the clerk of the board of supervisors to forthwith serve such petition personally or by registered mail upon the board of State tax commissioners. The said board of State tax commissioners shall upon receipt of such petition, forthwith examine same, and if in its judgment there is a showing to the effect that the equalization complained of is unfair, unjust, inequitable or discriminatory may proceed at once to make an investigation of the matters set forth in said petition. The said board of State tax commissioners shall have the same authority to consider and pass upon the action and determination of the said board of supervisors in equalizing said valuations as it has to consider complaints relative to the assessment and taxation of property. The said board of State tax commissioners shall have the right to order the said board of supervisors to reconvene and to cause the assessment rolls of said county to be brought before it, and it may summon the several supervisors of said county before it to give evidence in relation to said equalization, and may take such further action and may make such further investigation in the premises as it may deem necessary. If the said board of State tax commissioners shall decide that the determination and equalization made by the board of supervisors is correct, no further action shall be taken. If the said board of State tax commissioners, after due consideration, Action final.

Clerk to call meeting.

Apportionment.

Proviso.

Further proviso.

decides that the valuations of said county have been improperly equalized, it shall proceed to make such deductions from, or additions to the valuations of the respective townships, wards or cities as may be deemed proper, and in so doing the said board shall have the same powers as the board of supervisors had in the first instance. It shall be the duty of the said board of State tax commissioners forthwith, after completing its revision of the equalization of the valuation of the several assessment districts, to report its action to the board of supervisors by filing its report with the clerk of the board of supervisors. The action of the said board of State tax commissioners in the premises shall be final and binding upon the said board of supervisors. Upon receipt of such report from the board of State tax commissioners, it shall be the duty of the clerk of the board of supervisors to forthwith call a meeting of the board of supervisors, which shall not be less than three days nor more than five days after the said report of the board of State tax commissioners is filed. Notice of such meeting shall be given to each supervisor by service of a copy of the call either personally or by registered mail as the said clerk shall determine. As soon as the said board of supervisors has reconvened, it shall immediately proceed to apportion the State and county taxes to the several assessing districts in accordance with the equalization so made: *Provided*, That if the board of supervisors is in session at the time the report of the board of State tax Commissioners is filed, it shall be the duty of the said clerk to deliver the said report to the said board of supervisors, which shall equalize the county in the manner indicated in said report: *Provided further*, That the said beard of State tax commissioners shall not increase the amount of any ward or township above the values as determined by the tax commissioner's field men and shown by the cards of inspection.

History:—C. L. '97, 3857;—Am. 1909, p. 688, Act 292, Eff. Sept. 1;—Am. 1913, p. 402, Act 201, Eff. Aug. 14;—Am. 1921, p. 698, Act 380, Eff. Aug. 18.

Failure to comply with the statutory requirement of equalization by the board of supervisors invalidates the tax. Informal action which is not recorded will not answer the requirements.—Yelverton v. Steele, 36 M. 62. The power of equalization by board of supervisors being confined to the real estate and the whole subject being under their complete jurisdiction, they may adopt their own means of reaching the result. When any alteration is made in the aggregate valuation of the real estate, the additions or deductions so made may be expressed in any form which may by calculation be reduced to a percentage. "Determining the aggregate" involves the necessity of footing the personal estate as valued by the supervisors and the real estate at the amount determined by equalization.—Case v. Dean, 16 M. 12. See also Williams v. Mears, 61 M. 86. If no changes are required it is only necessary to enter upon the record the aggregate valuation of real and personal property of each township, as determined by the board.—Chamberlain v. St. Ignace, 92 M. 332; Hoffman v. Lynburn, 104 M. 494. The statute contemplates that additions or deductions in equalizing will be added to or deducted from the aggregate valuation of all taxable property in the township.—Boyce v. Sebring, 66 M. 210.

It is competent for the board to reduce the aggregate of the assessments below that of the assessors'.—Tweed v. Metcalf, 4 M. 579. The board of equalization has no authority over individual assessments. The provision relative to making descriptions conformable to the requirements of the law is one of vital importance and should have careful attention.

A record of equalization must show the assessed valuation of the several townships and the amount added to or deducted therefrom, else is fatally defective and voids the entire levy for the year.—Auditor General v. Roberts, and Auditor General v. Reynolds, 83 M. 471; Chamberlain v. St. Ignace, 92 M. 332. A record of equalization which shows only "real estate assessed," "real estate equalized," "total estate assessed," "total estate equalized," is too uncertain to have any value as a public record.—Paldi v. Paldi, 84 M. 346. The certificate of equalization must be entered upon the several assessment rolls and signed after such entry. In Westbrook v. Miller, 64 M. 129, the tax sale and deeds were held void where the chairman of the board of supervisors signed blank certificates of equalization and left them to the county clerk to fill and forward to supervisors.

But the failure of the clerk to sign the record of the equalization and apportionment does not affect the validity of the township and school district taxes. He may be permitted to sign the record while yet in office. Sheldon v. Township of Marion, 101 M. 259.

It was held that the chairman and clerk could while still in office affix their signature.—Boyce v. Auditor General, 90 M. 314.

The failure of the chairman of the board of supervisors to sign the record of equalization and apportionment of State tax is fatal to the validity of the tax deed.—Weston v. Monroe, 84 M. 341. The evidence of two witnesses who testify positively that proceedings for equalization, etc., were not signed by chairmen of boards during their respective terms of office, carries more weight of evidence than that of the two chairmen, who did not remember when they signed, but were confident it was not after their term had expired, notwithstanding the presumption as to official acts.—Auditor General v. Hill, 97 M. 80.

Where the record of the board of supervisors shows that the assessments of the various assessing districts were properly equalized and the taxes were properly apportioned, the fact that the certificate of equalization was not signed by the clerk but was signed by the chairman alone does not invalidate the tax.—Sheldon v. Twp. of Marion, 101 M. 259.

The power to equalize is exclusive in the board of supervisors.—Attorney General v. Sanilac Supervisors, 42 M. 72. The action of the board of supervisors in equalizing the assessment cannot be reviewed by the courts. Fraudulent disregard of their duties may warrant resort to the criminal law or to other remedy; but the correctness of their review cannot be considered by any body. The question of valuation rests with the judgment of the board.—McDonald v. Escanaba, 62 M. 555.

The assessment roll is a public record to be retained by the supervisor intact and to be turned over to his successor with the other records and official properties of his office. In the case of Albany & Boston Mining Co. v. Auditor General, 37 M. 391, the supervisor took the assessment roll of 1873 which was in his office, and with a blue pencil made such changes and alterations thereon in valuation and otherwise as he deemed necessary and thus made the roll for 1874. The court says: "It was highly improper, if not criminal, for the supervisor to make any changes, alterations or additions in or to the original assessment roll of 1873, required by law to be kept in his office."

The certificate of equalization properly signed and affixed to the assessment rolls is a prerequisite to the making of a valid tax roll.—Maxwell v. Paine, 53 M. 30. Supervisors have absolute and exclusive right to the possession of the rolls and are authorized to bring suit in their official characters to recover possession of them.—Phenix v. Clark, 2 M. 327.

A meeting of the board of supervisors for the year 1891 shall be held on the fourth Monday of June, and on the fourth Monday of June every fifth year thereafter; and when convened the board shall proceed to equalize the assessment rolls; and each of said supervisors shall add up the columns of their respective rolls, enumerating the number of acres of land and the value of the real estate and personal property assessed, so as to show the aggregate of each.—160n C. L. '15. Where equalization was made at June session (preceding meeting of State Board of Equalization) failure to equalize at October session (in the same year) is not fatal.—Silsbee v. Stockle, 44 M. 561; Boyce v. Sebring, 66 M. 210.

The assessing district is the unit for equalization, and an equalization that deducts an aggregate sum from the total valuation of several of the districts is void and confers no jurisdiction to levy a state and county tax and sell the land so assessed for non-payment of taxes.—Messinger v. Peter, 129 M. 93.

Section 2292, C. L. '15, requires that every order, resolution and determination of such board of supervisors shall be recorded in the records of the board and signed by the chairman and clerk. This section is mandatory and was enacted for the protection of both public interests and private rights. Pearsall v. Supervisor, 71 M. 438.

The above section includes all the proceedings required by law to be entered upon the records of the board.—Weston v. Monroe, 84 M. 341.

"The case of Auditor General v. Hill, 97 Mich. 80, is cited as supporting the doctrine that after having retired from office the chairman and clerk could not properly affix their signatures to the record. The point was not argued or considered in Auditor General v. Hill," and the case was determined solely upon the question of fact.—Sheldon v. Township of Marion, 101 Mich. 259.

When the assessor and board of review intentionally omitted a large amount of personal property and real estate from the tax roll, and greatly under-valued certain personal property and the business and residence property of the city, in order to throw a heavier burden of taxation on the outlying land in the city, a judgment holding the whole tax roll void as to all who had filed objections against it was proper.—Auditor General v. Pendill, 123 M. 521.

The question as to whether there was fraud in making up the assessment roll is a proper one for the jury.—City of Muskegon v. Boyce, 123 M. 535.

The power of equalization is confined to the real estate.—Case v. Dean, 16 M. 23.

Whatever deduction is made is on account of under-valuation or over-valuation of *real* property.—Auditor General v. Longyear, 110 M. 223.

A motion before a board of equalization "to amend the report, and that the several townships and cities be equalized as follows," the motion including all the townships and cities with the proper amounts opposite as equalized, covers the entire subject of equalization and is sufficient, although the motion is recorded by the clerk as one to amend the report of the committee on equalization.—Harts v. City of Mackinac, 131 M. 680.

It will be presumed that an equalization under Sec. 34 was based upon the real estate as the section requires and not upon both real and personal property where the basis of such equalization does not appear from the proceedings of the board.—Auditor General v. Ayer, 109 M. 694.

See Sec. 35, 99.

The board of state tax commissioners, proceeding under this section to equalize the valuations of a county, may review the action of the board of supervisors and increase the valuations without ordering said board to reconvene although the commissioners are empowered to require the supervisors to reconvene. Jurisdiction to proceed does not depend on the reconvening of the supervisors.—Attorney General ex. rel. Barnes v. Board of Supervisors of Midland Co., 178 M. 513.

As to amendment of this section by Act 292 Public Acts of 1909 which was held unconstitutional, see Zimmer v. Supervisors of Bay Co., 159 M. 213; Robinson v. Westover, 159 M. 225.

The provisions of this section providing for said appeal, confer upon the Board of State Tax Commissioners extended powers of investigation and provide that "the action of said Board of State Tax Commissioners in the premises shall be final," hence, where said Board has obtained jurisdiction and has acted, it should be held that its action is final, in the absence of fraud.—Barnes v. Board of Supervisors of Wayne Co., 194 M. 540.

OF TAXES, HOW AND BY WHOM CERTIFIED.

State taxes.

Auditor General to apportion.

Basis of apportionment.

County indebtedness to State.

To be portion of county tax

Proviso.

Sec. 35. (4029) On or before the first day of September in each year the Auditor General shall make and record in his office a statement showing the taxes to be raised for State purposes that year, referring to the law on which each tax is based, and the total amount of such taxes. The State tax he shall apportion among the several counties in proportion to the valuation of the taxable property therein as determined by the last preceding State board of equalization, and shall before the October session of the board of supervisors in each year make out and transmit to the clerk of each county a statement of the amount of such taxes so apportioned to such county. He shall also, in a separate item of said statement, set forth the amount of indebtedness of such county to the State remaining unpaid at the time such statement is made, as shown by the statement of the account between the county and the State made by the Auditor General on the first day of July next previous to such apportionment which amount shall be apportioned by the board of supervisors of the proper county at the same time as State taxes contained in said apportionment of the Auditor General, and shall be levied in the same manner as and become a portion of the county taxes for the same year, unless the said indebtedness shall have been paid to the State before October first: *Provided*, That such portion thereof, if any, as should be assessed to a particular township, shall be apportioned to and assessed upon such township, ward or city.

History:—C. L. '97, 3858—Am. 1915, p. 10, Act 5, Eff. Aug. 24.

Auditor General is bound to take notice of statutes changing county boundaries and creating new counties, and is bound to know what land falls in each and should apportion the State tax upon the basis of the assessed value of the land in each as last equalized.—Ontonagon Supervisors v. Gogebic Supervisors, 74 M. 721. State Board of Equalization.—Act 248, laws 1905. Auditor General should anticipate the existence of a new county which has been organized by legislative act in the apportionment of the State taxes and make apportionment accordingly.—Auditor General v. Menominee Supervisors, 89 M. 552. As to organization of new counties, see notes to Sec. 105.

When a statement of account between a county and the State showing a debt due the State is correctly and regularly made and the ascertained amount is seasonably certified in due form to the clerk of the county, it is the duty of the board of supervisors at once to make proper apportionment, and if they shall refuse to do so, they may be compelled by mandamus.—Auditor General v. Jackson Supervisors, 24 M. 237. Duty of board of supervisors within twenty days after indebtedness to State is certified to proper county officers to levy a tax to pay such indebtedness or to submit to vote of people the issue of bonds for that purpose.—2277 C. L. '15. Services of troops in aid of civil authorities.—876n C. L. '15. See Sec. 99.

Duties of township clerk.

Sec. 36. (4030) It shall be the duty of the township clerk of each township, on or before the first day of October of each year, to make and deliver to the supervisor of his township, a certified copy of all statements and certificates on file, and of all records of any vote or resolution in his office authorizing or directing moneys to be raised therein by taxation for township school, highway, drain, and all other purposes, together with a statement of the aggregate amount thereof, and such certified copies shall, by such supervisor, be delivered to the clerk of the county on or before the second Monday of said month, and the same shall by said clerk be laid before the board of supervisors at its annual meeting and filed in his office.

Duties of supervisor and county clerk.

History:—C. L. '97, 3859.

TOWNSHIP TAXES: The clerk's certificate of record of the vote of township board is to be executed and delivered in time for delivery to the county clerk before the meeting of the board of supervisors on or before the second Monday in October.—Peninsula Iron Co. v. Crystal Falls, 60 M. 510. A township board has special and limited authority, which must appear upon the face of the record.—Harding v. Bader, 75 M. 316. The presumption is in favor of the express terms of the record where no clerical error is shown, nor can a record be contradicted or varied by parol evidence.—Michigan Land Co. v. Republic Township, 65 M. 628. Where clerk's certificate is regular on its face and nothing is shown to invalidate the proceedings prior thereto, it is conclusive upon the supervisor and it makes it his duty to assess the tax and to issue his warrant for its collection. In case of issue by clerk of certificate unauthorized by law, supervisor is bound to take notice of the total absence of such legal authority.—Smith v. Crittenden, 16 M. 152.

If the several amounts to be raised are stated in township clerk's certificate his omission to aggregate the taxes is unimportant.—Boyce v. Auditor General, 90 M. 314.

Township may vote not to exceed $1,000 for contingent or ordinary expenses.—2048 C. L. '15, but no more except as voted for specific purposes. Action of township board under statute authorizing them to vote money to defray twp. expenses must be had at a regular meeting.—Peninsula Iron Co. v. Crystal Falls, 60 M. 510. Time and manner of voting township taxes.—2088 C. L. '15. Township taxes voted by township board before submission are invalid.—Auditor General v. Sparrow, 116 M. 574. When electors neglect or refuse to vote money for ordinary township expenses, township board may, at regular meeting, vote necessary amount but no more than might have been voted by electors.—2128 C. L. '15. Township may vote not exceeding 1 per cent on assessed valuation upon prior notice for erecting public buildings.—2049 C. L. '15; requires a majority of qualified electors voting.

Neglect or refusal of electors to vote money for ordinary township expenses must appear upon record of township board to authorize board to vote same, and record of meeting at which board voted must show that all members were present or notified.—Harding v. Bader, 75 M. 316; Auditor General v. McArthur, 87 M. 457. There is no presumption that electors refused or neglected to vote sufficient funds to defray ordinary expenses, and where township board votes money for that purpose the record must affirmatively show such neglect or refusal; and the same rule applies to the voting of a money tax for highway purposes.—Newaygo Mfg. Co. v. Echtinaw, 81 M. 416. Electors cannot be held to have neglected or refused to vote moneys for the contingent or poor funds when these items were not submitted to them; and the township board has no authority to vote either except upon such neglect or refusal.—Tillotson v. Webber, 96 M. 144; Auditor General v. D., S. S. & A R. R. Co., 116 M. 122.

Township record showing vote of highway and contingent taxes upon the day of the annual township meeting sufficiently shows that the action taken was that of the electors, and it will be presumed that it was taken at the time provided by statute.—Auditor General v. Longyear, 110 M. 223. Further as to voting taxes.—Crittenden v. Robertson, 13 M. 58; People v. Township Board of Woodhull, 14 M. 28.

Compensation of township officers.—2154-5 C. L. '15. Protection of orchards and vineyards.—7411n-7432r C. L. '15. Destruction of noxious weeds.—4287n C. L. '15. See 4652n C. L. '15, Am. Act 220, 1889.—Expense to be assessed against lands.—69r p. 305 C. L. '15. Cutting milkweed.—69r p. 306 C. L. '15; expense, how assessed.—69r, p. 306 C. L. '15. Establishing section corners assessed upon real estate.—2329 C. L. '15. Relocating and perpetuating section corners when desired by resident owners, to be assessed upon lands of persons refusing to pay.

—2488 C. L. '15, Act 248 of 1899. Repair, etc., of fences, to be assessed to land of person neglecting to pay.—2209 e. s. C. L. '15—Gilson v. Munson, 114 M. 671. Support of poor.—5251-2 C. L. '15. Maintenance of charges at county poorhouse.—5248 C. L. '15.

Payment of railroad aid bonds.—4199 e. s. C. L. '15. Payment of town bonds.—2189 C. L. '15. Mandamus lies to compel town clerk to issue a certificate for levy of a tax to satisfy judgment against the township.—Courtright v. Brook. Township Clerk, 54 M. 182. Township bonds, if legally issued are fixed charges against the township and record of vote of township board to raise money to pay such bonds need not show neglect or refusal of voters to vote money for such purpose.—Newaygo Mfg. Co. v. Echtinaw, 81 M. 416. Certain townships being held liable for county bonds issued for their benefit, action on writ of mandamus was suspended to permit assessment in the following years.—People v. Townships of Porter and Calvin, 18 M. 101.

See also 2114 C. L. '15. Further as to township taxes see Upton v. Kennedy, 36 M. 215; Silsbee v. Stockle, 44 M. 561; Peninsula Iron Co., v. Crystal Falls, 60 M. 510; Williams v. Mears, 61 M. 86; Mills v. Township of Richland, 72 M. 100; Harding v. Bader, 75 M. 316.

Supervisor can only assess such taxes as are properly certified to him by township clerk for assessment unless evidenced by other official action and which the law makes it his duty to assess without clerk's certificate.—Sage v. Auditor General, 72 M. 638. Where township clerk's certificate showed a given sum voted for township purposes and warrant and tax roll showed greater sum, held that proof of one certificate raises presumption against the existence of another not shown to have been made.—Case v. Dean, 16 M. 12.

Township has no authority under the provisions of 2047 C. L. '15, to raise money by tax to be expended for fair-ground purposes.—French v. Township of South Arm, 122 M. 593.

Mandamus will lie against township to enforce the assessment of amount to pay county tax, embezzled by township treasurer.—Hart Township v. Oceana Co., 44 M. 417.

SYNOPSIS OF HIGHWAY LAW: 4287n, 69r, p. 302, C. L. '15. Limitation of appropriation by highway commissioner for laying out, altering or discontinuing highway without concurrence of the township board $100.—4292n. Determination and apportionment—expense of line roads.—4299n. Bridges between townships and between township and village or city.—4441-6n. Assessment for damages.—4311n. Laying out temporary highways.—Act 327, laws 1907.

The highways are to be laid out, improved and maintained by two money taxes, —a road repair tax and a highway improvement tax; Act 108 of laws of 1907. Good roads district, Act 268 of laws of 1907. Assessment and collection of money tax for highway purposes.—4287n, 69r, p. 299. Assessment for emergent improvement.—4400n. Removal of encroachments.—4402n. Am. Act 244 of 1899. Erection, repair and preservation of bridges.—4415n-19n, 4423n-25n. Allowance for planting shade trees.—4468n, 69r, p. 300; for watering troughs or fountains.—4287n. Discretion of commissioner to require 25% of highway tax to be paid in money.—4468n, 69r, p. 300. Report of overseer to commissioner.—4650n, 4656n, Am. Act 220 of 1899. No error or omission of duty on the part of the overseer shall invalidate highway tax assessed on township roll.—4657n. Assessment for purchase of plank or toll road.—4481n. Blanks for commissioner and overseer to be furnished by the Auditor General.—4461n. Assessment for tools.—69r, p. 301. Assessment for highway orders.—4557n. Exemption of honorably discharged soldiers and marines from poll tax.—69r, p. 302.

Assessment of highway and railroad grades.—4770-73 C. L. '15. Township road system.—4372n C. L. '15.

Where highway taxes of a township are assessed on a labor basis, under Chapter 25 of Section 4614 C. L. '15, the tax need not be assessed by road districts, and a highway money tax levied under Chapter 25 must be levied upon all of the property of the townships, including that of any incorporated village. Held controlled by Ryerson v. Township, 52 M. 509 and Auditor General v. Railway, 116 M. 122.—Perrizo et al. v. Stephenson Township, 141 M. 167.

Labor and money tax which electors may vote under 4616n C. L. '15, is only for ordinary improvements for highways and bridges during the year.—Longyear v. Auditor General, 72 M. 415. An act requiring the township to raise $4,000 for bridge is in violation of Sec. 9, Art. X, Constitution.—Township of Ada v. Kent Circuit Judge, 114 M. 77. Township board has no authority to exempt certain property from assessment for highway taxes.—Auditor General v. D., S. S. & A. R. R. Co., 116 M. 122.

A special highway tax exceeding the amount allowed by law and assessed for highway not legally laid out without any showing in the township records that it had been voted is void.—F. & P. M. R. R. Co. v. Auditor General, 41 M. 635. Highway tax where no inhabitants and no actual or contemplated highways held invalid.—Michigan Land Co. v. Township L'Anse, 63 M. 700. Highway tax illegal where no action is properly certified to supervisor as taken by township meeting or town board, and board cannot act except on failure of electors, etc., which should appear on record.—Gamble v. Auditor General, 78 M. 302. Voters cannot be said to have neglected or refused to vote highway tax unless question was submitted, and tax voted by township board without such neglect or refusal is unauthorized.—Auditor General v. D., S. S. & A. R. R. Co., 116 M. 122.

A highway tax is illegal when ordered by the board of supervisors without the certificate of the township clerk that such tax had been imposed by the township and it not appearing that such tax was fixed by the township board, or that the electors either voted or failed to determine the amount.—Boyce v. Auditor General, 90 M. 314. See also as to sufficiency of record relative to taxes ordered raised. A special highway tax cannot be levied upon the property of a township to pay the indebtedness of road districts therein.—McFarlan v. Township of Cedar Creek, 93 M. 558.

Further as to highway taxes see Silsbee v. Stockle, 44 M. 561; Alcona Co. v. White, 54 M. 503; Lake Superior C. R. & I. Co. v. Thompson, 56 M. 493; Peninsula Iron Co. v. Crystal Falls, 60 M. 510; Michigan Land Co. v. Township L'Anse, 63 M. 700; Mich Land Co. v. Republic Township, 65 M. 628; Mills v. Township of Richland, 72 M. 100; Turnbull v. Township of Alpena, 74 M. 621; Newaygo Mfg. Co. v. Echtinaw, 81 M. 416; Hoffman v. Lynburn, 104 M. 494, etc.

DRAIN TAXES: Townships are not agencies to originate proceedings or levy or collect drain taxes, nor do moneys collected belong to township.—Emerson v. Township of Walker, 63 M. 483; Barker v. Vernon, 63 M. 516. See notes to Sec. 37. Duties of township clerk relative to drain taxes.—4917 C. L. '15. But see "Drain Taxes," Sec. 37.

Mandamus to compel the proper officers to take steps to lay a drain assessment roll before the supervisors and order the payment of orders drawn in anticipation of taxes to be levied, will be refused where it appears that the drain is not constructed and the relator is not entitled to payment.—Sherwood v. Rynearson et al. 141 M. 92.

SYNOPSIS OF SCHOOL LAW: 5641-5907 C. L. '15. Inspectors may attach to a school district any person residing in township and not in any organized district at his request; and for all district purposes, except raising tax for building schoolhouse, such person shall be considered as residing in such district, but when set off to a new district no sum shall be raised for such person as his proportion to the district property.—5657. Voting tax for schoolhouse—limit of tax.—5667. Estimate of school tax.—5676; report to township clerk.—5677. Annual report of taxes assessed.—5679. Purchase of text books.—5683. Purchase of appendages.—5688. Director's report of moneys raised.—5691. Report of school taxes by township clerk to supervisor.—5696. Apportionment of school taxes.—5698. Assessment of school tax—If any taxes provided for by law for school purposes shall fail to be assessed at the proper time the same shall be assessed in the succeeding year.—5699. Assessment and apportionment of one mill tax.—5700. Assessment and application of taxes in divided district.—5701. Taxes in fractional districts.—5702. Statement to township treasurer of school and library tax.—5703. Statement of one mill tax in fractional districts.—5704. Collection and apportionment of taxes on division of district.—5705. Apportionment of money due fractional district.—5708. Two-thirds vote required to borrow money—limit of indebtedness.—5712. Amended Act 190 of 1899. Voting tax to redeem bonds.—5714. Supervisor to assess amount of judgment against district—collection.—5715n. Collection of judgment for schoolhouse site.—5722. Appeal from action of inspectors.—5731 e. s. Graded school districts.—5734-39 Am. Act 258 of 1899. Voting tax for school libraries.—5751. Liability of township clerk and supervisor in regard to district taxes.—5758. Voting tax for text books.—5782. Estimate of amount to be raised.—5784. Publication of proceedings of annual school meeting in graded districts.—5809. Purchase of flag.—5811. Compensation of county commissioner of schools and examiners.—5885. Voting tax in township school district.—5900. Assessment.—5901. Provision as to taxes.—5905. Compensation of members of board.—5906.

Assessment for public libraries in cities.—3431-3440-3443 C. L. '15.

Section 5706 C. L. '15 providing that township treasurer shall retain full amount of school taxes on roll subject to order of the district officers, is superseded by Sec. 52 of the General Tax Law.—4048 C. L. '15.

See Secs. 37 and 99.

A school district has no power to levy a tax except for purposes specified by statute.—Hinman v. School District, 4 M. 168. School taxes voted by boards before submission are invalid.—Auditor General v. Sparrow, 116 M. 574. Board has no authority to raise money for school purposes unless voters have neglected or refused so to do.—Auditor General v. D., S. S. & A. R. R. Co., 116 M. 122. School taxes not affected by failure of equalization.—Auditor General v. Gurney, 109 M. 472.

5699 C. L. '15 requires the supervisor to assess taxes levied by school districts. He has no discretion in the matter but is bound to spread on his tax roll school taxes properly certified and directed to be levied by the board of supervisors.—Union School District v. Parris, 97 M. 593. Sub. 6, 5667 C. L. '15, which prohibits the taxation of lands for school buildings unless situated within 2½ miles from the schoolhouse site, applies only to primary schools, and in a graded school district all land within the district may be taxed for the erection of the schoolhouse.—Keweenaw Ass'n. v. School District, 98 M. 437. Sec. 5699 C. L. '15, which provides that school taxes not assessed at the proper time shall be assessed the succeeding year, applies where the district board fails to certify the tax to the township clerk in time for certification to the supervisor for assessment.—Wilcox v. Township of Eagle, 81 M. 271. School taxes for a district which includes lands in another county are properly levied upon those lands.—Johnston v. Cathro, 51 M. 80.

Further, as to school taxes, see Stuart v. School District, 30 M. 69; Jones v. Wright, 34 M. 371; Burns v. Bender, 36 M. 195; Midland School Districts, 40 M. 551; Stockle v. Silsbee, 41 M. 615; Bryant v. Moore, 50 M. 225; Johnson v. Cathro, 51 M. 80; Port Huron Board of Education v. Treasurer, 57 M. 47; Moiles v. Watson, 60 M. 415; Burroughs v. Goff, 64 M. 464; Wilcox v. Township of Eagle, 81 M. 271; Keweenaw Ass'n v. School District, 98 M. 437; Sheldon v. Marion, 101 M. 256; Auditor General v. D., S. S. & A. R. R. Co., 116 M. 122.

LOCAL IMPROVEMENTS: The whole theory of a legal assessment for local improvements depends upon a uniform rule of charges within some defined district and resting upon some principle which is intelligible.—Clay v. Grand Rapids, 60 M. 451. A special assessment which discriminates between the property of persons taxed cannot be sustained.—White v. Saginaw, 67 M. 33. Every valid assessment must be based upon some legally ordained basis of apportionment and not arbitrarily.—Detroit v. Daly, 68 M. 503. Charter authority to make local assessments must be strictly followed, and when the mode is prescribed by the charter or by ordinances adopted under its authority the measure of power is limited thereby.—Whitney v. Village of Hudson, 69 M. 189.

Where charter requires board of assessors to enter upon special assessment roll the valuation of each parcel within the district, as shown by the last preceding general assessment roll, the valuation of a parcel lying partly within and partly without the district may be apportioned where it was assessed as one tract upon the general roll.—Boehme v. Monroe, 106 M. 401.

Terminal property of a railroad company cannot be sold under provisions of special charter for non-payment of assessment for local improvements.—L. S. & M. S. R. R. v. Grand Rapids, 102 M. 374. Property of railroad company necessary to enjoyment of its franchise, such as portion of road bed, cannot be sold under proceedings to collect assessment levied theron for municipal improvements.—D., G. H. & M. R. R. Co. v. Grand Rapids, 106 M. 13. A railroad company is not liable to assessment for paving a street because its track is located therein and abuts upon a section of the street so improved, although the assessment is made according to frontage.—Boehme v. Monroe, 106 M. 401.

Payment of specific taxes "in lieu of all other taxes" does not exempt from assessment for local improvements.—L. S. & M. S. R. R. Co. v. Grand Rapids, 102 M. 374. But a section of railroad right-of-way occupied by tracks and used for no other purpose, cannot be assessed for improving a street which crosses it under city charter requiring such assessment to be according to benefits.—D., G. H. & M. R. R. Co. v. Grand Rapids, 106 M. 13. Further, as to assessment for, see Woodbridge v. City of Detroit, 8 M. 274; Jackson v. Detroit, 10 M. 248; Goodrich v. Detroit, 12 M. 279; Hobart v. Detroit, 17 M. 246; Scofield v. Lansing, 17 M. 437; Motz v. Detroit, 18 M. 495; Hoyt v. Saginaw, 19 M. 39; Steckert v. East Saginaw, 22 M. 104; Lansing v. Van Gorder, 24 M. 456; Powers' Appeal, 29 M. 504; Warren v. Grand Haven, 30 M. 24; Jones v. Water Commissioners, 34 M. 273; Thomas v. Gain, 35 M. 155; Butler v. Detroit, 43 M. 552; Sheley v. Detroit, 45 M. 431; Cumings v. Grand Rapids, 46 M. 150; Rentz v. Detroit, 48 M. 544; Beidler Mfg. Co. v. Muskegon, 63 M. 44; Adams v. Bay City, 78 M. 211; Manistee v. Harley, 79 M. 238; Thayer v. Grand Rapids, 82 M. 298; Auditor General v. Fisher, 84 M. 128; Ely v. Grand Rapids, 84 M. 336; Sligh v. Grand Rapids, 84 M. 497; Davies v. Saginaw, 87 M. 439; Whitney v. Port Huron, 88 M. 268; Townsend v. Manistee, 88 M. 408; Hembling v. Big Rapids, 89 M. 1; Beecher v. Detroit, 92 M. 268; School Furniture Co. v. Grand Rapids, 92 M. 564; Lundbon v. Manistee, 93 M. 170; Auditor General v. Maier, 95 M. 127; Powers v. Grand Rapids, 98 M. 393; Big Rapids v. Supervisors, 99 M. 351; Trowbridge v. Detroit, 99 M. 443; Lumber Co. v. East Jordan, 100 M. 201; Borgman v. Detroit, 102 M. 261; L. S. & M. S. R. R. Co. v. Grand Rapids, 102 M. 374; Goodwillie v. Detroit, 103 M. 283; Moore v. Detroit, 103 M. 292; Turner v. Detroit, 104 M. 326; Shimmons v. Saginaw, 104 M. 511; Harper v. Grand Rapids, 105 M. 551; Duffy v. Saginaw, 106 M. 335; Boehme v. Monroe, 106 M. 401; Scotten v. Detroit, 106 M. 564; Nelson v. Saginaw, 106 M. 659; Brown v. Saginaw, 107 M. 643; Atwell v. Barnes, 109 M. 10; Balch v. Detroit, 109 M. 253; Fitzhugh v. Bay City, 109 M. 581; Bandistel v. Jackson, 110 M. 357; Detroit v. Judge Recorder's Court, 112 M. 588; Thompson v. Detroit, 114 M. 502; Kalamázoo v. Francoise, 115 M. 554; Bogert v. Jackson Circuit Judge, 118 M. 457; Walker v. Ann Arbor, 118 M. 251; Scribner v. Grand Rapids, 119 M. 188; Voigt v. Detroit, 123 M. 547; Goodrich v. Detroit, 123 M. 559.

See Sec. 99.

See Corliss v. Highland Park, 132 M. 152; Auditor General v. Hoffman, 132 M. 198; Auditor General v. Chase, 132 M. 630; Nowlen v. Benton Harbor, 134 M. 401; Walker, Trustee, v. City of Detroit et al., 136 M. 6; Auditor General v. Calkins, 136 M. 1.

Supervisors to apportion taxes among townships.

To examine requirements of townships.

To hear objections.

Sec. 37. (4031) The board of supervisors, at its annual session in October in each year, shall ascertain and determine the amount of money to be raised for county purposes, and shall apportion such amount, and also the amount of the State tax and indebtedness of the county to the State among the several townships in the county in proportion to the valuation of the taxable property therein, real and personal, as determined by it, or as determined by the board of State tax commissioners upon appeal in the manner provided by law, for that year, which determination and apportionment shall be entered at large on its records. It shall also examine all certificates, statements, papers and records submitted to it, showing the moneys to be raised in the several townships for school, highway, drain, township and other purposes. It shall hear and duly consider all objections made to raising

Correction of records, etc.

Duties of prosecuting attorney.

Township, etc., taxes.

Record of action.

any such moneys by any taxpayer to be affected thereby. If it shall appear to the board that any certificate, statement, paper or record is not properly certified, or that the same is in anywise defective, or that any proceeding to authorize the raising of any such moneys has not been had or is in anywise imperfect, and such certificate, statement, paper, record or proceeding can then be corrected, supplied or had, such board may authorize and require such defects or omissions of proceedings to be corrected, supplied or had. It may refer any or all such certificates, statements, papers, records and proceedings to the prosecuting attorney, whose duty it shall be to examine the same and without delay report in writing his opinion to the board. It shall direct that such of the several amounts of money proposed to be raised for township, school, highway, drain and all other purposes as shall be authorized by law, be spread upon the assessment roll of the proper townships, wards and cities. Such action and direction shall be entered in full upon the records of the proceedings of the board, and shall be deemed final as to the levy and assessment of all such taxes, except when there is a change made in the equalization of any county by the board of State tax commissioners upon appeal in the manner provided by law.

History:—C. L. '97, 3860;—Am. 1909, p. 690, Act 292, Eff. Sept. 1;—Am. 1913, p. 404, Act 201, Eff. Aug. 14.

Annual session second Monday in October; county clerk to publish notice three weeks.—2265 C. L. '15. Annual session in October embraces all adjournments.—Hubbard v. Winsor, 15 M. 146. Clerk to record all proceedings.—2267 C. L. '15. Final passage requires majority of all members elect.—2266 C. L. '15.

Date of certificate of board of review under Sec. 37 is immaterial.—Auditor General v. Ayer, 122 M. 136.

COUNTY TAX INCLUDES: Not exceeding $1000 to build or repair roads or bridges, by two-thirds vote of board of supervisors.—Sec 9, Art. X, Const.; 2274 C. L. '15, Sub. 15. Laying out highways and constructing bridges. Sec. 11, Art. X, Const. Erecting and repairing county bridges.—2243 C. L. '15, and State and territorial roads.—2288-2291 C. L. '15. Burial lots for soldiers.—1054 C. L. '15. Burial of soldiers.—Act 242 of 1899. Soldiers' monuments.—1066-8 C. L. '15. Courthouse.—2251 C. L. '15. Judgments.—12972n C. L. '15. Repair of public buildings.—2270-1 C. L. '15. Publication of proceedings.—2272 C. L. '15. Purchase of real estate necessary for poor farm and public buildings; removal of county buildings within limit of county seat; erection of necessary public buildings, may not borrow or raise by tax more than $1.000 in any year for constructing or repairing public buildings, highways, or bridges unless authorized by majority vote of electors; payment of loan made by board within 15 years from date of loan; compensation for services rendered for and claims allowed against county; current expenses and necessary charges incident to or arising from the execution of lawful authority of board of supervisors within limitation prescribed by law.—2274 C. L. '15, but the power to fix and determine the site of any building, to remove site of county buildings within limits of county seat, to erect buildings, to abolish or revive distinction between township and county poor, to make regulations for destruction of wild beasts and obnoxious weeds, to authorize townships by vote of electors to borrow or raise money by tax in excess of $1,000 for roads and bridges, to determine the relative proportion of the expense of roads and bridges between townships and to transact business of the county in cases where no other provision is made requires two-thirds of all the members of the board.—2275 C. L. '15.

Transportation and distribution of public documents.—Sec. 32, Act 44 of 1899. Compensation of members of boards of supervisors.—2293 C. L. '15, and board of auditors. Wayne county.—2335 C. L. '15. Salary of stenographers.—14478 e. s. C. L. '15. Salary of county officers.—2514 C. L. '15, in Wayne.—2338 C. L. '15. Compensation of county treasurer.—2369 C. L. '15; of prosecuting attorney.—2411-13 C. L. '15; of county clerk.—2437 C. L. '15. Salary of probate judges.—12231-45n C. L. '15; of probate register.—12241n C. L. '15. Expenses of probate courts.—12234-36n, 12242n C. L. '15. Salary of sheriffs, U. P. 2462-3 C. L. '15. Insurance of county buildings 2370 C. L. '15. Assistance in criminal cases.—2418 C. L. '15. Jail, etc. charges.—2525 C. L. '15. Damages and compensation awarded in condemnation of plank or toll road.—4287n C. L. '15. Books for clerks' office and clerks' calendar.—2435 C. L. '15; for register of deeds.—2477 C. L. '15; and surveyors.—2484 C. L. '15. County clerks' books for soldiers' discharges, and fees for recording.—1074 e. s. C. L. '15. Seal for register of deeds.—2478 C. L. '15. Plats and field notes of survey of lands in county.—2486 C. L. '15. Enrollment of militia.—864 C. L. '15. Weights and measures.—6234n-44n C. L. '15. Support of defectives.—5217 C. L. '15; and paupers.—5243 C. L. '15. Infectious diseases.—5055 C. L. '15. Soldiers' relief fund.—Act 214 of 1899. Restoring plats.—3367 C. L. '15. Building poor houses.—5212 C. L. '15. Support of county poor.—5231 C. L. '15. Payment of judgment for damages by mob.—Act 252 of 1899.

The board of supervisors has no power to allow the sheriff an annual salary in lieu of all fees, and a sale of land to satisfy a tax made up in part of such illegal salary is void.—Hewitt v. White, 78 M. 119. Collins v. Rea, 127 M. 273.

Fish shutes in certain counties.—Acts 116 of 1893 and 118 of 1895. Indebtedness to State, tax or bonds for.—2277 C. L. '15. Expenses of establishing lines and corners, to be assessed upon lands benefited.—2488 C. L. '15. Expenses of mine inspection, to be assessed in separate column.—5502n-5515r C. L. '15. Removal of county seat.—Sec. 8, Art. X, Const. Vote of county for loan or tax for removal of county seat.—2283 C. L. '15. Wayne board of auditors shall report to supervisors amount of tax necessary to be raised for county purposes. —2341 C. L. '15. County road system.—4347n e. s. C. L. '15.

Power of board of supervisors to fix compensation or adjust claims.—See Sec. 10, Art. X, Const.

Failure of board of supervisors to examine certificates, etc., is an irregularity at most, and in the absence of an affirmative showing of defects in taxes or that defendant tax-payer has been denied a hearing, the validity of the taxes will be presumed.—Auditor General v. Hill, 98 M. 326.

Determination of board of supervisors must be recorded in the records of the board and must be signed by the chairman and the clerk.—2292 C. L. '15. Neglect or refusal of members of the board to perform any duty required by law.—2294 C. L. '15.

Apportionment of indebtedness of vacated villages if in two or more townships.—2838 C. L. '15.

"To raise money by tax or loan" does not warrant resort to both methods at one time to raise an amount which both together would produce.—Loomis v. Rogers Township, 53 M. 135.

Board of supervisors has no power under Subs. 7 and 10, Sec. 2274 C. L. '15, to borrow the money necessary to defray the current expenses and charges of the county, but the same must be raised by taxation.—Supervisors v. Warren, 98 M. 144.

Mandamus refused to compel provision to be made by taxation to pay warrants issued by board of supervisors for county building purposes in excess of statutory limits when not submitted to vote.—Pack v. Supervisors of Presque Isle, 36 M. 377; see also Callam v. Saginaw, 50 M. 7. As to manner of submitting vote see Thomas v. Kent Circuit Judge, 116 M. 106.

Mandamus granted to compel supervisors to spread upon roll sum lost by State in consequence of failure of county treasurer to account for moneys received at tax sale conducted by him.—Attorney General v. Supervisors St. Clair Co., 30 M. 388.

It is competent for the board of supervisors to raise money for building bridges, also for the destruction of Canada thistles and other noxious weeds, the destruction of which is provided for by law; and this may be regarded as a highway tax.—Tweed v. Metcalf, 4 M. 579.

The power of taxation implies apportionment and when that power has been exercised courts will not declare it void unless a flagrant invasion of private rights is clearly demonstrated.—School Furniture Co. v. Grand Rapids, 92 M. 564. Board not required to determine the amount of State tax to be raised, but simply to apportion the State tax, reference being had to the Auditor General's certificate.—Hoffman v. Lynburn, 104 M. 494. State and county taxes are wholly distinct in their object, destination and amount from the other taxes; they stand upon their own necessity and have no such natural or legal connection with the others as to be necessarily involved in the same fate.—Pillsbury v. Auditor General, 26 M. 245.

Board having fixed the amount to be raised at a percentage on the assessed valuation. Held valid, being just as certain as though calculated.—Hubbard v. Winsor, 15 M. 145. But if amounts are definitely fixed by calculation no question can be raised.

The requirements that the board of supervisors shall ascertain and determine the amount to be raised, etc., and apportion among townships, etc., and that their action shall be entered in full upon the records, are mandatory.—Boyce v. Sebring, 66 M. 210. As to action of board and record thereof see Boyce v Auditor General, 90 M. 314.

Boards of supervisors have no general power to establish claims in favor of the counties against townships.—People v. Wright, 19 M. 351.

In Fay v. Wood, 65 M. 390, objection being made to the assessment roll for want of statutory certificates, and it being claimed that the appearance of the roll showed that one or more leaves had been detached, it was held that a question of fact was presented whether the roll was properly certified when delivered to the supervisor.

The board of supervisors does not originate township or school taxes.—Robbins v. Barron, 83 M. 124.

That the board of supervisors at their annual meeting voted county taxes in a gross sum, instead of setting forth the items, will not invalidate a tax levy where it is not shown that the amount levied is unreasonable or in violation of the limitations of the act authorizing the levy.—Weston Lumber Co. v. Munising Twp., 123 M. 138.

COUNTY ROAD SYSTEM: Act 82, Laws of 1907, provides for adoption of County Road System. Board of three members. Tax not more than two dollars on each thousand of valuation, except where greater tax has been specially granted by legislation; in Wayne, Kent and Houghton a tax of twenty-five cents per thousand. Tax apportioned by board of supervisors at October session. Townships entitled to State award for roads approved by State highway commissioner.

AGRICULTURAL SOCIETIES: Assessment for.—7824 C. L. '15. Assessment void if tax was ordered without receiving sworn certificate showing statutory amount raised by the society. Hall v. Kellogg, 16 M. 135; Hogelskamp v. Weeks, 37 M. 422. But county tax will not be invalidated unless it is conclusively shown that amount therefor was included therein.—Boyce v. Auditor General, 90 M. 314. As to presumption that certificate was present.—Silsbee v. Stockle, 44 M. 561. As to manner of apportionment.—Harding v. Bader, 75 M. 316.

HIGHWAY TAXES: The board of supervisors has no power to raise money in a county tax to be expended generally upon highways.—Sage v. Auditor General, 72 M. 638. Highways and roads are by the constitution put under the control of the board of supervisors, not arbitrarily, but under legal restrictions, and those restrictions have confined them to State and territorial roads; and they can have no occasion to raise money for other roads, and they must exercise their own judgment in expending such moneys as they may lawfully raise. A resolution of a board of supervisors providing for raising money to be paid over to towns without any definition of purpose and to be spent under direction of a town officer is held to be unauthorized and void.—Attorney General v. Bay Co. Supervisors, 34 M. 46. A tax voted by the board of supervisors to be included in the county tax to be distributed among and expended by the several supervisors for highway purposes is illegal.—Gamble v. Auditor General, 78 M. 302.

Board of supervisors may authorize township to raise $10,000 by vote for building or repair of bridge. See Act 98, Laws of 1905, Sub. 15.

SYNOPSIS OF DRAIN LAW: 4870-4960 C. L. '15. Where benefits and assessments for drain laid in one county extend to lands in adjoining county, commissioners of counties affected shall act jointly.—4874. Where drain runs through city appeal from assessment to be to common council.—4875. No drain tax spread until all records have been filed with county clerk.—4876. Petition for drain.—4880, Am. Act 272 of 1899. Award of damages to be deducted from assessment of benefits.—4892. Order of determination shall include description of lands to be assessed for benefits, said lands to constitute special assessment district. Notice of letting to be served on resident owners and to contain description of lands. Review of assessment.—4902. Am. Act 272 of 1899. Determination of period of collection.—4903. Parties assessed to be preferred in awarding contract.—4904; Am. Act 272 of 1899. Commissioner to apportion per cent of benefits to township and to lands benefited, subject to review.—4906; Am. Act 272 of 1899. Appeal to probate court.—4907, Am. Act 272 of 1899. Appointment of board of review—review of assessment—review upon certiorari.—4908, Am. Act 272 of 1899. Who may not act upon appeal.—4908n. Review—lands added to district—notice to nonresident owner—decision of board of review final.—4909, Am. Act 272 of 1899. Costs.—4910, Am. Act 272 of 1899. Assessment to be for benefits—description of lands—4911. Assessment and collection on part-paid and state lands—report of assessment upon state lands to be made by supervisor to Commissioner of State Land Office and amount to be paid by Auditor General on certificate of Commissioner.—4912; but the sum of all drain taxes that may be assessed against any state lands, including all drain taxes heretofore paid by the state, shall not aggregate a sum greater than 50 per cent of the price at which said lands are held by the state. Additional assessment not subject to review or appeal.—4913. Adjournment of review—appeal by township.—4914, Am. Act 272 of 1899. Computation of assessment.—4915, Am. Act 272 of 1899. Commissioner to make special assessment roll for each township and city affected and shall certify thereon his determination as to time of payment—rolls to be filed in office of township or city clerk before last Wednesday in September.—4916, Am. Act 272 of 1899. Clerk to certify to supervisors amount to be assessed—supervisors to lay statement before board of supervisors at next annual meeting.—4917. Supervisor to spread assessment when so directed by board.—4918. Supervisor to give township treasurer a statement of the amounts assessed at large in the township and endorse upon special assessment roll in clerk's office the amount of benefits spread on his tax roll.—4919. Collection of drain taxes under provisions of general tax law—taxes a lien upon land.—4920. (Provision of same section that tax shall be a personal claim against owners is deemed to be invalid. See notes to section in Compiled Laws of 1915.) Lands to be returned for delinquent tax as for other taxes.—4921. Drain taxes collected to be accounted for to county treasurer—may be paid to township or county treasurer with drain orders on same drain.—4923. Collection not to be enjoined.—4924-5. Proceedings for collection.—4926. Relaying or completion of drain—reassessment of benefits—allowance upon reassessment for sums paid—provisions apply to drains laid under prior laws.—4927, Am. Act 272 of 1899. Drain taxes charged back and reassessed.—4928. Suit for drain taxes.—4929-31. Drain tax subject to be set aside for error in description or other defects in roll to be reported by commissioner to board of supervisors at October session, who shall order reassessment upon proper description. Such report may be made at any time before the sale of the land for such tax.—4930, C. L. '15. (Whenever this is done after the lands are returned by township treasurer a report of the action taken should be at once certified to the Auditor General by county clerk.) Drains traversing more than one county—appointment of special commissioners—assessment apportioned to counties and certified to clerks—assessment and collection as hereinbefore provided—assessment for cleaning, straightening, deepening, widening or extending drains—provisions for assessment and collection same as for other drain taxes.—4931-41.

County drain commissioner shall be a party in any action to set aside drain tax.—Act 141 of 1899.

Act 141 Public Acts of 1899 providing that in any suit brought to set aside any drain tax, or in any way attacking the legality of any drain proceeding, the county drain commissioner shall be made a party, requires the drain commissioner to be made a party in proceedings to recover a drain tax paid under protest.—Godkin v. Rutterbush, 147 M. 116.

The report of a committee appointed to tabulate the report of the township clerk to the county clerk of moneys voted to be raised in the several townships, is not sufficient to legalize a drain tax spread upon the assessment roll without direction of the board of supervisors. In this respect drain taxes appear to be on a different footing from other taxes.—Post v. Harris, 95 M. 321.

A warrant for the collection of drain taxes is fatally defective if the taxes are not so spread on the assessment roll as to identify the several drains and the levy for each.—Dunning v. Calkins, 51 M. 586.

Further as to drain taxes see Butler v. Supervisors of Saginaw Co., 26 M. 22; Harbaugh v. Martin, 30 M. 234; Dawson v. Township of Aurelius, 49 M. 479; Brownell v. Gratiot Supervisors, 49 M. 414; Clark v. Drain Commissioner, 59 M. 618; Wallace v. Sorter, 52 M. 159; Whiteford v. Probate Judge, 53 M. 130; Bixby v. Goss, 54 M. 551; Frost v. Leatherman, 55 M. 33; Emerson v. Township of Walker, 63 M. 483; Barker v. Township of Vernon, 63 M. 516; Alger v. Slaght, 64 M. 589; Lindsay v. Eastwood, 72 M. 336; Taylor v. Township of Avon, 73 M. 604; Cook v. Auditor General, 79 M. 100 (on part paid); Mason v. New Haven Township, 82 M. 435; Conley v. St. Clair Supervisors, 88 M. 245; Nugent v. Erb, 90 M. 278; Tinsman v. Monroe Supervisors, 90 M. 382; Tile Company v. Snyder, 93 M. 325; Bump v. Jepson, 106 M. 641; Laubauch v. O'Meara, 107 M. 29; Atwell v. Barnes, 109 M. 10; Angell v. Courtright, 111 M. 223; Hilton v. Dumphy, 113 M. 241; Smith v. Carlow, 114 M. 67; Brady v. Hayward, 114 M. 326; Kiley v. Bond, 114 M. 447; Hillyer v. Jonesfield, 114 M. 644; Roberts v. Smith, 115 M. 5; Smith v. Board of Supervisors, 115 M. 202; Thomas v. Walker Township Board, 116 M. 597; Houser v. Burbank, 117 M. 463; Lanning v. Palmer, 117 M. 529; Post v. Harris, 95 M. 321; Zink v. Supervisors, Mich. Mandamus Cases 1337; Henderson v. Darling, Mich. Mand. Cases 1339; Snyder v. Supervisors, Mich. Mand. Cases 1340; Auketell v. Hayward, 119 M. 525; Jenny v. Township of Mussey, 121 M. 229.

See Sec. 99.

This drain tax was erroneously spread, and being paid under protest the plaintiff had a right to sue the treasurer, to whom it was paid, for the same. Drain Law. Chap. 6, Sec. 6, Auditor General v. Calkins, 136 M. 1, which discredits the dictum in Smith v. Carlow, 114 M. 67.—Murphy v. Dobbin, 137 M. 565.

Lands delinquent for drain taxes may be bid off by the state in accordance with the provisions of the tax law.—Rumsey v. Griffin et al, 138 M. 413.

A change was made and the contract advertised and let in accordance with the change. *Held:* That the proceedings were not avoided by the slight change made in absence of proof that any one was injured by the change.—Horn v. Livingston County Supervisors, 135 M. 553.

Where a land owner has actual notice of the proceedings to restore a drain and has waived any objection to the drain crossing his land, if the line on the old drain is followed, and where the statutory notices have been given, he cannot resist the sale of his land for the non-payment of the drain taxes.—Auditor General v. Crane, 152 M. 94.

For codification of Drain Law see Act 316, P. A. 1923.

Appeal

When county to pay costs of.

How taxed.

Sec. 37a. (4032) If upon such appeal to the board of State tax commissioners it is determined by said board that the appeal is groundless and not well founded, then the costs made and incurred by the county in defending the same and in the proceedings thereof, shall be paid by the township whose supervisor made such appeal. If the allegations set forth by the said supervisor making such appeal are determined to be well founded, then the said county shall pay the costs of the said township by it expended in making and prosecuting said appeal, but in no case shall more than seventy-five dollars costs be taxed by either side. The costs shall be taxed by affidavit before the county clerk in accordance with the rules of practice now governing circuit courts as to taxation of costs. Copies of the said bill of cost shall be served upon the county treasurer by the township and upon the supervisor of the township by the county. If costs be taxed in favor of the county and against the township, the county treasurer is hereby authorized to take the amount of said costs out of any funds due or that may become due said township, and transfer the same to the general fund of said county. If costs shall be taxed in favor of the township, the said county treasurer shall immediately pay over to the treasurer of said township from the general fund of said county, the amount of said taxed costs, and the township treasurer shall deposit the same to the credit of the contingent fund of said township.

History:—Added 1913, p. 405, Act 201, Eff. Aug. 14.
This amendment provides for an appeal by the supervisor of any township or city to the board of state tax commissioners from the action of the board of supervisors in equalizing the valuation of the several assessment districts.
This act was held valid by the Supreme Court. See Attorney General, ex rel. Barnes vs. Board of Supervisors of Midland County, 178 Mich. p. 513.

County clerk to make certificates of apportionment.

Sec. 38. (4033) The clerk of the board of supervisors shall, immediately after the said apportionment, make out two certificates showing the amounts apportioned to each township for State, county and the various township purposes, each tax being kept distinct, one of which he shall deliver to the county treasurer, and the other to the supervisor of the proper township: *Provided*, That if said clerk fail to make such certificate the supervisor shall take official notice of all certificates, statements, papers and records in the office of the township and county clerk relating to the levy of taxes in his township, and of the action of the board of supervisors thereon.

Proviso.

History:—C. L. '97, 3861.
Supervisors can only assess such taxes as are properly certified to him unless evidenced by other official action and which the law makes it his duty to assess without clerk's certificate.—Sage v. Auditor General, 72 M. 638. Mandamus will not be granted to compel a supervisor to spread upon his roll that portion of the county tax certified to him which, while purporting to have been voted for the purchase of a poor farm, is really to aid in securing a location for a tannery.—Cheboygan Supervisors v. Township of Mentor, 94 M. 386.
See Sec. 36, 37, 99.

TAXES HOW TO BE ASSESSED.

Assessment, how made.

Sec. 39. (4034) The supervisor of each township or ward, and the assessing officer of each city or village, as provided by law, shall proceed to assess the taxes apportioned to his township, or assessment district, according and in proportion to the valuations entered by the board of review in the assessment roll of the township, ward, village or city of the year: *Provided*, That if the board of review make no such entry, then on the valuation therein as entered by the supervisor or assessor. For the purpose of avoiding fractions in computation, the assessor may add to the amount of the several taxes to be raised not more than one per cent; said excess shall belong to the contingent fund of the township; such taxes shall be entered in separate columns, as follows: All school taxes and the one mill tax in one column, highway taxes in another, township taxes in another, county taxes in another, and the State taxes in another column; and if other taxes are at any time required to be raised, they shall be placed in separate columns. The total of all the taxes assessed against any one valuation or parcel of property shall

Proviso.

Several taxes entered separately.

Total to be extended.

be added and carried out in the last column upon the right hand side of such roll.

History:—C. L. '97, 3862.

The several taxes assessed must be clearly defined at the head of the several columns in which they are entered. It is not sufficient that this designation be such that the assessor understands what the tax is; it must be so written at the head of the column that any other person may understand what the tax is for. In Tillotson v. Webber, 96 M. 144, it was held that where an amount charged against a description as "township tax" can be accounted for only by assuming that the general highway tax is included, it is a violation of the law and renders a tax deed for such a tax invalid.

The same parcel of land may be included in two or more assessment districts when it appears that the land may be benefited by the improvements in each district.—Nowlen v. City of Benton Harbor et al., 134 M. 401.

Approval of board of supervisors of assessment to pay judgment against city not necessary, and failure of clerk to certify to board of supervisors cannot defeat assessment, which should be apportioned as are other taxes.—Shippy v. Mason, 90 M. 45.

Supervisor cannot levy tax at his discretion.—Lacey v. Davis, 4 M. 157. The failure of the supervisor to extend the taxes upon a corrected assessment roll received from the board of supervisors after equalization was held in Seymour v. Peters, 67 M. 415, to be fatal to the validity of the taxes. For later cases see Sec. 99.

Assessors cannot alter or amend the rolls as certified by the board of supervisors in any particular.—Clark v. Axford, 5 Mich. 190. Supervisor is not liable for refusing to make an assessment to pay a judgment which was a nullity. —Brewer v. Palmer, 13 M. 104. In Wayne County Savings Bank v. Supervisor, Mich. Mandamus Cases 1348, mandamus issued to compel assessment to pay township bonds. Mandamus having been granted to compel supervisor to assess taxes to pay bonds due, second writ will not be granted to compel an assessment for the uncollected portion until the sale of the lands for delinquent taxes upon which said assessment was made.—Wayne County Savings Bank v. Supervisors, 97 M. 630. In Attorney General v. Finney, Mich. Mandamus Cases 1318, mandamus was granted to compel a supervisor to assess State and county taxes as apportioned, he having refused to act on the ground that the equalization was inequitable.

A tax is invalid if it appears only upon a roll to which it does not belong and is omitted from a roll to which the law authorizing it expressly assigned it.—Folkerts v. Powers, 42 M. 283. Repair of fences to be assessed in separate column.—2209 C. L. '15. Assessment of judgment against township, village or city in certain cases.—12970-1n C. L. '15. Assessment to pay indebtedness of vacated village.—2837 C. L. '15. Assessments for public improvements under Act 124 of 1883.—3390 C. L. '15. Provision that taxes be in separate column is mandatory.—Cooley on Taxation 428. The statute requiring the one mill tax to be stated in the column of school taxes is not merely directory, but mandatory.—Case v. Dean, 16 M. 12. The one mill tax should be determined by assessed valuation and not by equalized valuation.—Township of Deerfield v. Harper, 115 M. 678.

Placing the county road tax in the column of county taxes on the tax roll is a proper listing of such taxes and it is not necessary that such taxes be listed in a separate column.—Garfield Twp. v. A. B. Klise Lumber Co., 219 M. 31.

Held, that the term "board of review," in section 39, applies to the local board or the State board, as circumstances require, and, where the State board had changed the valuations, the taxes should be assessed according to the valuations so changed.

The opinion of the assessor that the acts of the board of State tax commissioners in changing the valuation in the assessment roll were irregular and void did not excuse him from assessing the taxes according to such changed valuations, since the opinion of an officer that the acts of his superior are void did not excuse him from assessing the taxes according to such changed valuations, since the opinion of an officer that the acts of his superior are void does not relieve him from performance of a statutory duty based on such acts.—State Tax Comrs. v. Quinn, 125 M. 128.

The question of raising highway taxes must be submitted to the electors at the township meeting under 4615-7n C. L. '15, and they must have neglected and refused to act before the commissioner is authorized to act.—Thayer Lbr. Co. v. Twp. of Springwells, 131 M. 12.

After an assessment roll had been made, reviewed and completed, the supervisor fraudulently altered the valuation of certain lands by reducing the valuation fixed by the board of review. *Held*, that the entire tax was vitiated by the fraud and the fraudulent tax roll was absolutely void.—Auditor General v. Hughitt, 132 M. 311.

One whose land is assessed for benefits in the construction of a drain, who, with full knowledge of the proceedings, takes none of the statutory steps to determine their validity, cannot afterwards set up defects in the proceedings to defeat the payment of the taxes assessed for the construction of the drain.—Wilson v. Woolman, 133 M. 350.

In the computation and extension of the taxes the greatest care should be observed. The computation and entry in the assessment roll of the amount to be levied on each parcel of property is a judicial duty of assessors which cannot be delegated to third persons to be performed out of the presence of the assessors or without their supervision.—Black on Tax Titles 120.

Any increase or diminution made by the supervisors in the equalization must be shared alike by both realty and personalty, and a tax is void if the entire increase is distributed upon the realty, the tax on the land being excessive.—Sinclair v. Learned, 51 M. 335. It is not competent to put one rate upon real estate, another rate upon personal property generally, and still another rate upon certain kinds of corporate stock.—Black on Tax Titles 28. Where a sum of money has been lawfully voted to be raised by taxation for township purposes, the failure of the board of supervisors to direct its levy would not invalidate the action of the supervisors in spreading it upon the rolls.—Upton v. Kennedy, 36 M. 215.

There must be no more levied in the aggregate for any given tax than is authorized, and the proportion charged against each parcel of land or to each person to whom property is assessed, must be no more than such person or property can properly be charged with. The reason for holding a tax sale void when the levy is excessive is that the sale is for the aggregate of all the taxes, so that the tax title is based as much on what is illegal as upon what is lawful.—Silsbee v. Stockle, 44 M. 561. Excessive tax levies are held to invalidate a tax deed because they are unauthorized and that the officer has no jurisdiction to make them; and where such a levy is made upon taxable property contained in the whole roll the entire roll is invalidated, as where an excess of $3.01 of two mill tax was levied upon the property of the township.—Boyce v. Sebring, 66 M. 210.

Any material excess in the State, county, or township tax and which are all blended in one column, will render the taxes in such column void.—Case v. Dean, 16 M. 12. Practically any excess is held to be material. An excess of $25.00 in a township tax legally assessed invalidates the sale of land upon which any part of the excess was levied.—Rogers v. White, 68 M. 10. An excess of 45 cts. in highway tax on a parcel of land renders the tax deed therefor void.—Seymour v. Peters, 67 M. 415. An excess of seven or eight cents respectively, against two parcels of land was held to render the tax deed therefor invalid so far as it was based upon the tax for the year in which such excess appears.—Tillotson v. Webber, 96 M. 144. Sale is void where the tax is shown to be "five or six cents" in excess of the amount authorized by law.—Burroughs v. Goff, 64 M. 464. An excess of highway tax over the statutory limit is sufficient to defeat a sale made for an aggregate of taxes of which it forms a part.—Silsbee v. Stockle, 44 M. 561. Where a school district record showed $180.00 voted by electors and no record of increase by the district board and $240.00 was levied by the supervisor, it was held that a tax title based thereon was void.

The foregoing as to the effect of excessive assessment relates in many cases to the invalidating of sales or tax deeds. Under the present law owners have opportunity to have this excess eliminated by the court on the hearing upon petition for decree and cannot be heard to complain in this particular after decree is entered; but it is none the less important that the excess should be studiously avoided and so prevent the necessity of and the loss incident to a contest over the taxes.

The question as to whether there was fraud in making up the assessment roll was a proper one for the jury.—Muskegon v. Boyce, 123 M. 535.

Where property is destroyed by fire after the tax has been spread on the roll, the owner is not entitled to a rebate of the tax in absence of action by proper authority remitting the same.—Case v. City of Detroit, 129 M. 928.

After an assessment roll had been made, reviewed and completed, the supervisor fraudulently altered the valuation of certain lands by reducing the valuation fixed by the board of review. *Held,* that the entire tax was vitiated by the fraud and the fraudulent tax roll was absolutely void.—Auditor General v. Hughitt, 132 M. 311.

A tax-payer whose lands are returned delinquent for a drain tax cannot attack the validity of the tax collaterally. The only method of review is under Sec. 4908 C. L. '15.—Auditor General v. Bolt, 147 M. 283.

Whether the amount assessed is excessive or not cannot be litigated after decree.—Muirhead v. Sands, 111 M. 487; Spaulding v. O'Connor, 119 M. 45; Church v Nester, 126 M. 547; Berkey v. Burchard, 119 M. 101-105; Cook v. Auditor General, 124 M. 430; Wilkin v. Keith, 121 M. 66; Hall v. Mann, 118 M. 201; Sayers v. O'Connor, 124 M. 256; Flint Land Co. v. Auditor General, 133 M. 542.

HIGHWAY TAXES: A highway tax is illegal if the manner of levy and collection prescribed by the statutes is not followed.—Ryerson v. Laketon, 52 M. 509. Under 4650n and 4656n C. L. '15, a verified return of delinquent labor taxes by the overseer of highways is essential to confer jurisdiction upon the supervisor to spread the tax upon the township assessment roll.—Hamilton & Merryman Co. v. Township of L'Anse, 107 M. 419. A tax deed was held void where the taxes for which the sale was made included highway taxes and the overseer of highways had not sworn to the returns of highway labor which he had made to the supervisor.—Hogelskamp v. Weeks, 37 M. 422. A township tax levy for highways is properly added to the other highway taxes on the assessment roll and not to the township tax.—Silsbee v. Stockle, 44 M. 561. A highway money tax when voted must be laid upon all property in the township, including that in incorporated villages.—Ryerson v. Laketon, 52 M 509. Highway taxes are not necessarily illegal because for roads in contemplation but not laid out.—Sawyer-Goodman Co. v. Crystal Falls, 56 M. 597. The term "any city or school tax" includes highway taxes levied by the authority of the city.—Alpena City Water Company v. City of Alpena, 130 M. 518.

Town meeting must refuse or neglect to raise highway fund before town board can act, and the matter must have been brought to the attention of electors.—F. F. Lumber Co. v. Thompson Township, 139 M. 698.—Tillotson v. Webber, 96

M. 144; Auditor General v. Sparrow, 116 M. 574; Perrizo v. Stephenson Township, 141 M. 167.

Boards of supervisors may authorize township to raise $10,000 for repair of roads or to build roads. Act 98, 1905.

DRAIN TAXES: A warrant for the collection of drain taxes is fatally defective if the taxes are not so spread on the assessment roll as to identify the several drains and the levy for each.—Dunning v. Calkins, 51 M. 556. Drain taxes are separate funds not to be confounded with other or similar assessments.—Wallace v. Sortor, 52 M. 159. Drain taxes assessed at large to be included in column with general township or city tax; those laid upon lands benefited to be spread in separate column headed with name of drain and opposite descriptions separately written and following descriptions assessed for other taxes on said rolls.—4918 C. L. '15. Supervisor's action in assessing drain tax is merely ministerial; he has no authority to change assessments. —Lindsay v. Eastwood, 72 M. 336. Supervisor and township clerk cannot refuse to certify, etc., as to drain taxes, because, in their opinion, the assessments would be invalid because of irregularity in the proceedings.—Laubach v. O'Meara, 107 M. 29. But in Nugent v. Erb, 90 M. 278, the court exercised its discretion and refused mandamus to require supervisor to assess a drain tax where it appeared that no legal drain could be laid out.

Where the board of supervisors in the exercise of their lawful authority have ordered an assessment for the construction of a drain to be spread upon the rolls, a supervisor should not refuse to spread the tax because in his opinion, the proceedings were irregular, and where he refuses to perform his official duty mandamus will issue to compel him to act.—Scholtz v. Smith, 119 M. 634.

Fraud in assessing for benefits. No lands benefited by drains can be omitted from the assessment.—Hudlemeyer v. Dickinson et al, 143 M. 250.

Assessment in proportion to benefits. A tax for a sewer assessment made on all the lots of a block at one price, set aside so far as the rear tier of lots was affected, as those lots were not benefited by the sewer to the same extent as other lots, the rear tier of lots having house drainage to another sewer and receiving benefit from the new sewer only so far as the surface drainage was concerned.—Auditor General v. O'Neill, 143 M. 343.

Taxes and charges a lien on Dec. 1.

Precedence of tax lien.

SEC. 40. (4035) The taxes thus assessed shall become at once a debt to the township, ward or city from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day in December, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes shall also be a lien on all personal property of such persons so assessed from and after the first day of December in each year, and shall take precedence of any sale, assignment or chattel mortgage, levy or other lien, on such personal property, executed or made after said first day of December, except where such property is actually sold in the regular course of trade.

History:—C. L. '97, 3863.

Township can, in suit by its supervisor, collect a personal tax due which the treasurer has failed to collect. The right of action conferred by this section is independent of that derived from Sections 55 and 56, providing for the collection of such delinquent taxes by the treasurer of the township upon warrant issued by county treasurer.—Bangor v. Smith Transportation Co., 112 M. 601. Supervisor to prosecute in name of people, etc.—2110 C. L. '15. A municipality may institute suit to enforce the payment of taxes which are made a debt to the city by statute, and which the treasurer has failed to collect; and recovery may be had against the owner of the property for valid tax, notwithstanding a mistake was made in the name of the person to whom it was assessed.—City of Menominee v. S. K. Martin Lumber Co., 119 M. 201.

In action for taxes assessed against personal property it is not necessary to show diligence upon the part of township treasurer if it appears that taxes were not collected.—Township of Deerfield v. Harper, 115 M. 678. See further for rulings in suits for taxes.

Priority of mortgage lien over tax lien on personalty. The lien for taxes is not superior to liens existing when the tax lien takes effect.—Lucking v. Ballantyne, 132 M. 584. See Noeker v. Howry, 119 M. 629.

Taxes not a charge upon person or land prior to December, when for the first time the opportunity is offered or the duty arises to pay them.—Harrington v. Hilliard, 27 M. 271. Drain taxes a lien as soon as benefits are apportioned.—Lindsay v. Eastwood, 72 M. 336. A lien for city taxes in cities governed by special charter is fixed by such charter.—Eaton v. Chesebrough, 82 M. 214. Lien for taxes assessed in cities governed by Act 215 of 1895 is as provided in this section. Whether lien for village (corporation) taxes assessed under Act 3 of 1895 attaches when lands are returned to county treasurer after the expiry of warrant.—2743 C. L. '15—or not until December 1st, quere.

In construing timber contract containing provision as to payment of taxes assessed: *Held,* that the mere listing of lands for purpose of taxation is not a completed assessment and that notice of release after listing in April and before the October meeting of the board of supervisors and the ascertainment of the amount to be assessed relieved vendee from payment of taxes thereafter assessed for said year upon said lands.—Rothchild v. Begole, 105 M. 388.

Purchasers at a void tax sale acquire no lien for amount paid for deed or for subsequent taxes in the absence of a statute transferring the State's lien.—Croskery v. Busch, 116 M. 288. Where land sold under claim of good title free from all incumbrances was burdened with tax lien, buyer can recover difference between value of premises with such a title and their worth with the title he received.—Stockham v. Cheney, 62 M. 10.

It is held in this state, as between vendor and vendee that taxes unpaid when title passes, which have become a lien upon the land are encumbrances.—White et al. v. Gibson et al., 146 M. 547. Jacobs v. Union Trust Co., 155 M. 233.

Purchaser of bank stock prior to December 1 takes it free from any lien for taxes.—St. John National Bank v. Township of Bingham, 113 M. 203.

Chattel mortgage does not transfer the legal title to the mortgagee but affords a security merely.—Wineman v. Electrical Mfg. Co., 118 M. 636.

Since taxes assessed against personal property become a debt to the township in which they are assessed and are enforceable only by such township in a suit at law, the township is not entitled to refuse to pay over the State and county's portion of taxes assessed against personal property, though delinquent and unpaid.—City of Muskegon v. Muskegon County, 123 M. 272.

The time when the lien will attach must be determined by the terms of the statute.—Frederick Raynsford v. Theodore I. Phelps, 43 M. 342.

Taxes become a lien December 1st and not before.—Attorney General Report 1893, p. 180.

A city may maintain assumpsit to collect personal taxes from the real owner, though the treasurer could not, because they were assessed in the name of a different person.—City of Menominee v. S. K. Martin Lumber Co., 119 M. 201.

Suit cannot be brought by supervisor during the time the tax roll is in the hands of the town treasurer to collect the tax.—Decatur v. Copley, 133 M. 546.

Assessments on land cannot be made a personal claim in the absence of statutory provisions.—City of Grand Rapids v. L. S. & M. S. Ry., 130 M. 238.

"Taxes thus asessed shall become at once a debt to the township, ward, or city from the persons to whom they are assessed," does not make a ward tax a debt due to the ward; such tax is a debt due to the city for which only the city can sue.—City of St. Joseph v. Vail, 137 M. 276.

Under the Detroit city charter the lien for taxes on personal property takes effect as soon as the amount of the tax is determined.—Crawford v. Koch, 169 M. 372.

Assessor to foot roll.

Duties of township clerk.

City and village clerks to report municipal taxes.

County clerk to report to Auditor General.

Sec. 41. (4036) Before the supervisor or assessing officer shall deliver such roll to the township treasurer or city collector he shall carefully foot the several columns of valuation and taxes, and make a detailed statement thereof, which he shall give the clerk of his township or city, and said clerk shall immediately charge the amount of taxes to the township treasurer or city collector. The clerk of each city and incorporated village shall report to the clerk of their respective counties all taxes levied in their respective cities or villages, and not included in the general tax levy, on or before the first day of October in each year. The county clerk shall, within thirty days after the close of the annual session of the board of supervisors in October in each year, forward to the Auditor General, to be filed in his office, a statement showing the aggregate valuation of all property as assessed in such assessing precinct within the county during the current year. He shall include in such statement a detail of all taxes to be raised in the county for such year; also the amount of taxes not included in the general tax levy, reported to him by the several city and village clerks as above provided.

History:—C. L. '97, 3864:—Am. 1899, p. 422, Act 262, Eff. Sept. 23.

Township is not estopped by settlement of township board with treasurer from recovering any balance in his hands and not included in such settlement; as when an excess has been levied and collected and treasurer had only been charged with amount stated in supervisor's warrant.—Boardman v. Flagg. 70 M. 372.

THE TAX ROLL.

Supervisor to annex warrant to tax roll.

Township treasurer to pay over State and county taxes.

Distress and sale.

Lost roll.

Tax roll.

SEC. 42. (4037) The supervisor shall thereupon prepare a copy of the said assessment roll, with the taxes assessed as hereinbefore provided, and annex thereto a warrant signed by him, commanding the township or city treasurer to collect the several sums mentioned in the last column of such roll and to retain in his hands the amount receivable by law into the township treasury for the purposes therein specified, and to pay over to the county treasurer the amounts which shall have been collected for State and county purposes up to and including the tenth day of January next following, within three days thereafter, and the remainder of the amounts therein specified for said purposes, and account in full for all moneys received on or before the first day of March next following; and the said warrant shall authorize and command the treasurer, in case any person named in the assessment roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods and chattels of such person. The supervisor may make a new roll and warrant in case of the loss of the one originally given to the township treasurer; the copy of the roll with the warrant annexed shall be known as "The tax roll."

History:—C. L. '97, 3865:—Am. 1897, p. 394, Act 261, Eff. Aug. 30.

When roll has come to assessor from board of supervisors properly certified he has no right unless from defect which renders the whole roll void to refuse to make out the tax roll and attach his warrant thereto. He is required to issue warrant in general form, and cannot notice or except individual cases.—Clark v. Axford, 5 M. 182. Supervisor without any action by electors or township board has no authority to add amounts for township expenses, and tax so levied is void, and may void entire township roll when not distinguishable from valid part.—Lacey v. Davis, 4 M. 140.

A supervisor executing a tax warrant is held to a knowledge of any illegality manifest on the face of the warrant.—Atwell v. Zeluff, 26 M. 118. But where taxes are certified to him in legal form, he performs only a ministerial duty in spreading them upon the roll and affixing his warrant, and in such case cannot be held liable.—Wall v. Trumbull, 16 M. 228. New warrant does not detract from protective force of the process.—Bird v. Perkins, 33 M. 28. Further as to warrant, see Tweed v. Metcalf, 4 M. 579; Wisner v. Davenport, 5 M. 501.

The tax roll is not admissible in evidence to show defective certification of assessment roll, as certificates required to assessment roll are no part of tax roll and not required to be copied thereon.—Hecock v. Van Duesen, 80 M. 559. See also Redding v. Lamb, 81 M. 318.

See Secs. 44, 87 and 99.

Notice of State and county taxes.

Town treasurer's bond.

SEC. 43. (4038) The supervisor of each township, on or before the fifth day of November in each year, shall notify the township treasurer of the amount of the State and county taxes as apportioned to his township, and such treasurer, on or before the twenty-eighth day of November, shall give to the county treasurer a bond running to the county in double the amount of State and county taxes, with sufficient sureties, to be approved by the supervisor of the township and the county treasurer, conditioned that he will pay over to the county treasurer, as required by law, all State and county taxes which he shall collect during his term of office and duly and faithfully perform all the other duties of his office. The county treasurer shall file and safely keep such bond in his office, and shall give to the township treasurer a receipt stating that he has received the bond required, which receipt the

Supervisor to deliver tax roll.

township treasurer shall deliver to the supervisor, on or before the first day of December. The supervisor, after the delivery of such receipt, and on or before the first day of December, shall deliver to the township treasurer the tax roll of his township.

History:—C. L. '97, 3866:—Am. 1903, p 34, Act 28, Eff. Sept. 17; Am. 1911, p. 253, Act 156, Eff. Aug. 1.

The provision of this section, requiring the supervisors to deliver the tax roll to the treasurers on or before the first day of December, is directory and should not be permitted to shut off the remedy by appeal in Section 34, where the appeal was seasonably taken.—Barnes v. Board of Supervisors of Wayne Co., 194 M. 540.

Township treasurer shall receive all moneys belonging to township.—2133 C. L. '15. Shall give bond.—2134 C. L. '15. Shall keep true account.—2135 C. L. '15. Further as to bond of township treasurer.—2137-43 C. L. '15. Bond by surety company.—9219 e. s. C. L. '15. Sureties to justify.—195-197 C. L. '15. Action on bond.—12353n e. s. C. L. '15. Private suits on official bond.—12353n C. L. '15. Township treasurer should be a party to his own official bond.—Johnston v. Kimball Township, 39 M. 187. Sureties upon township treasurer's bond for his second term who were not upon his bond for his first term, are not liable for the default of their principal during his first term.—Paw Paw v. Eggleston, 25 M. 36. Sureties upon a city or county treasurer's bond are not liable in an action thereon for moneys not collected nor for moneys lawfully accounted for.—Berrien Co. Treasurer v. Bunbury, 45 M. 79. Filling vacancy in office of township treasurer.—2108 C. L. '15.

As to liability of sureties on official bonds and action thereon see Stevenson v. Bay City, 26 M. 44; Detroit v. Weber, 26 M. 284; 29 M. 24; Perley v. County of Muskegon, 32 M. 132; Johnston v. Kimball Township, 39 M. 187; Detroit v. Houghton, 42 M. 459; Rice v. Sidney Township, 44 M. 37; Berrien County Treasurer v. Bunbury, 45 M. 79; Marquette County v. Ward, 50 M. 174; Township v. Kirsten, 72 M. 1; Village of Evart v. Postal, 86 M. 325; Township of Crystal Lake v. Hill, 109 M. 246; Cheboygan County v. Erratt, 110 M. 156; Village of Allegan v. Chaddock, 119 M. 688; Montmorency Co. v. Putnam, 122 M. 581.

A township treasurer in the collection of the county tax is the agent of the county, and the county has a right of action upon his bond for money so collected and not accounted for, but no right of action against the township for its recovery.—Hart Township v. Oceana Co., 44 M. 417. A treasurer who has received state and county taxes is required to pay the sums received over to the county treasurer in the absence of legal protest from the taxpayers and cannot retain it on his claim that the collection was illegal or irregular.—Berrien County Treasurer v. Bunbury, 45 M. 79.

The certificate of equalization by the chairman of the board of supervisors is no part of the assessment roll and need not be copied into the tax roll.—Boyce v. Sebring, 66 M. 210. The tax roll must be an accurate copy of the assessment roll without addition or deduction. Public policy will not permit of any tampering with the assessment roll after it is equalized and completed and certified as required by law and no description can be added or valuation be increased.—Weston v. Monroe, 84 M. 341. The power of the supervisor over the collection (tax) roll terminates when in regular course it has passed into the hands of the treasurer for collection; and any act of his thereafter in altering the roll is not an official one, but private and personal. Where supervisor after roll has been delivered to the treasurer drew a pen across the figures therein and inserted other figures in lieu thereof, held that a seizure of chattels to satisfy the amount set opposite a tax-payer's name, which had been thus changed is not justifiable; and it is immaterial that by the change the amount was made less instead of greater. It is essential that the collection (tax) roll and the original (assessment roll) on file in the supervisor's office should correspond; and no lawful change can be made in the former unless sanctioned by the state of the latter, or so as to cause a substantial variance between the two.—Ferton v. Feller, 33 M. 199. Supervisors cannot bring their work to a successful completion until they have affixed to the tax roll a good and sufficient warrant. An unsigned and undated warrant is invalid.—Westbrook v. Miller, 64 M. 129.

During successive years there have been many changes in the form of warrant issued to supervisors and other assessors, and for this reason no form of warrant should be used except that last issued by the auditor general or a form in full accord therewith.

Collector is not responsible beyond the amount of taxes actually received by him for the moneys called for by a tax roll to which no warrant is attached empowering him to enforce payment. He must have in his hands the statutory means for collection before he can be in default for not collecting.—Weimer v. Bunbury, 30 M. 201. Time for delivery of warrant is directory.—Cooley on Taxation 428.

When tax roll not received within lawful time.

Sec. 43a. That whenever any township, city or county treasurer does not receive the tax roll within the time specified under the provisions of section forty-three of this act by reason of any delay caused by an appeal to the board of State tax commissioners as provided by act number two hundred one, Public Acts of nineteen hundred thirteen, such treasurer shall receive taxes appearing on such roll with the additional charge of one per cent for a collection fee for the period of thirty days after the receipt of the tax roll, except in counties, cities or townships where some special provision is made by law for a collection fee the treasurer shall comply with such special provisions during said thirty-day period. On all taxes unpaid at the expiration of said thirty-day period he shall add four per cent, and on or before the expiration of sixty days from the receipt of said tax roll by said township or city treasurer he shall make a return to the county treasurer of the uncollected taxes assessed on real and personal property as provided by section fifty-five of this act.

Treasurer shall receive taxes; fee one per cent.

Fee four per cent.

History:—Added by Act 1 of 1917, Eff. Aug. 10.
NOTE.—Section 43a extends the time for the collection of taxes by the local treasurers in cases where they do not receive the tax roll within the time provided by section 43.

SEC. 44. (4039) On receiving such tax roll, the township treasurer or other collector shall proceed to collect such taxes. The township treasurer shall remain in his office at some convenient place in his township, village or city on every Friday in the month of December thereafter, from nine o'clock a. m. to five o'clock p. m. to receive taxes: *Provided, however,* That he shall receive taxes upon any week day when they may be offered, and on all sums voluntarily paid before the tenth day of January of the succeeding year, he shall add one per cent for collection fees, and upon all taxes paid on or after said tenth day of January he shall add four per cent. In townships where the taxes assessed and levied amount to fifty thousand dollars and upwards the township treasurer shall receive in lieu of fees, a salary of not less than six hundred dollars per year, said salary to be fixed by the township board, payable from the contingent fund of the township as follows: One-half of said sum on the tenth day of January, and the balance of said sum at the time the delinquent tax rolls are returned each year. All fees collected by the township treasurer in townships where the taxes assessed and levied amount to fifty thousand dollars or more, shall be credited to the contingent fund of the township. The salary so paid shall cover the making out of the delinquent tax rolls as well as the collection of taxes, when the bond of said treasurer, as provided in section forty-three, shall be furnished by a surety company, the cost of said bond shall be paid by the township from the contingent fund of said township. In case the township treasurer may be apprehensive of the loss of any personal tax assessed upon his roll, he may proceed to enforce its collection at any time, and if compelled to seize property or bring suit in December, may add four per cent for collection fees, and when taxes are assessed on property occupied by tenant or tenants paying rental therefor, and he is assessed as occupant of said premises, the said tenant or tenants shall

Township treasurer to collect taxes.

Proviso, week days.

Collection fees.

Salary in lieu of fees.

When payable.

Disposition of fees.

What salary to cover.

Cost of surety bond.

Apprehension of loss of taxes.

Liability of tenant.

Notice to tenant.

Proviso act not to apply.

be liable for the taxes assessed on said property after the time said tax roll is delivered to the township treasurer or other collecting officer for the year, but not for more of the same than the amount of the rental may be while said tax roll is in his hands and which becomes due to the owner during such period, and may be collected in the same manner as provided for collecting the same from persons owning and occupying their own property; and said collecting officer shall notify all such persons occupying rented property, or so far as he may know of the same, as soon as the tax roll is delivered to him, by written notice, and shall note said notice and the date thereof against the description of said property on the roll: *Provided*, That the provisions of this act as to amended salary of township treasurers in lieu of fees, shall not apply to township treasurers whose salaries are now fixed by any local or special act, in effect at the time of the taking effect of this act.

History:—C. L. '97, 3867: Am. 1915, p. 319, Act 187, Eff. Aug. 24.

Duty of women endowed with land to pay taxes thereon.—Rea v. Rea, 63 M. 268. Discharge of insolvent debtor does not discharge taxes.—14465r C. L. '15. The claim for personal tax stands no better or other chance against the estate of an insolvent than the claim of an individual.—Lyon v. Receiver of Taxes, 52 M. 276. Trustee to whom conveyance has been made of stock of goods, book accounts, etc., and who agrees to pay creditors as moneys are received, held to have properly paid taxes upon the stock of goods.—Tanner v. Page, 106 M. 155. Collection of taxes against bridge company.—8745 C. L. '15.

Where lands are occupied and assessed to owner or occupant it becomes a duty which the person assessed owes to the State to make payment.—Blackwood v. Van Vliet, 30 M. 118. Tenant is abundantly protected by being allowed to pay the taxes and set them off against his rent. But may not, as against ground rental, off-set taxes levied on property tenant has himself added to the realty.—Williams v. Towl, 65 M. 204. See Sub. 11, Sec. 8. Taxes paid in advance of the time payment can be enforced are voluntary payments, and cannot be recovered without statutory permission.—Cox v. Welcher, 68 M. 263.

Collector has no right to receive in payment of tax a draft of his creditor upon himself. Taxes are due not to him, but to the public, and claims against him are not a legal tender for or off-set against taxes.—Elliott v. Miller, 8 M. 132. Treasurer has no authority to receive note in payment of taxes and township will not be bound thereby, but collection of the tax may be enforced at any time during life of treasurer's warrant. Turnbull v. Township of Alpena, 74 M. 621. While treasurer may not accept note in payment of taxes he violates no public trust if he makes a loan of his private funds and applies the loan in payment of the borrower's taxes.—Hatch v. Reid, 112 M. 430. Not competent for township treasurer to receive sawlogs in payment of taxes and bind the township by so doing.—People v. Seeley, 117 M. 263. If he receives anything except what the law authorizes him to receive and receipts for the taxes he must make good the amount.—Jones v. Wright, 34 M. 371.

Whenever any check or bank draft shall be tendered in payment of any debt, taxes or other obligation due to the state or to any municipality therein, such check or draft shall operate as a payment made on the date said check or draft was received and accepted by the receiving officer, if it shall be paid on presentation without deduction for exchange or cost of collection: Provided, however, that no receiving officer shall be required to receive in payment of any debt, taxes or other obligation collectable or receivable by him any tender other than gold or silver coin of the United States, United States treasury notes, gold certificates, silver certificates or national bank notes.—277 C. L. '15, Am. Act 288, 1899. Draft or check should be presented for payment within a reasonable time. No delay is reasonable beyond that which may be fairly required in the ordinary course of business without special inconvenience to the holder, or by the special circumstances of the case.—Phenix Insurance Co. v. Gray, 13 M. 191; Moore v. Auditor General, 122 M. 599; City of Sault Ste. Marie v. Hotten, 171 M. 265. See Sec. 277 C. L. '15; Bd. of Supervisors of Chippewa Co. v. Bennett, 185 M. 544.

The law imposes upon a life tenant and his grantees the duty of paying the taxes on the land.—Jeffers v. Sydnam, 129 M. 440.

County and township treasurers required to pay into state and county treasuries, as the case may be, the same description of funds which they shall have received.—278 C. L. '15.

This drain tax was erroneously spread, and being paid under protest the plaintiff had a right to sue the treasurer, to whom it was paid, for the same. Drain Law, Chapter 6, Sec. 6, and Auditor General v. Calkins, 136 M. 1, which discredits the dictum in Smith v. Carlow, 114 M. 70.—Murphy v. Dobben, 137 M. 565.

INJUNCTION TO RESTRAIN WASTE: When any person, company or corporation shall neglect or refuse to pay any tax assessed on the lands of such person, company or corporation within the time specified by law, the township treasurer shall be entitled to an injunction to restrain waste on any of such lands upon which the taxes shall remain unpaid when it shall appear that such lands are chiefly valuable for the timber being, standing or growing thereon. And any circuit judge or circuit court commissioner of the county in which such lands are situated may, on the application of such township treasurer, make an order restraining any person from committing waste thereon.

4190 C. L. '15. Act applies only to wild lands and treasurer is made agent of the State to commence suit, which cannot be done until the expiration of the time specified by law for the payment of the taxes.—Caldwell v. Ward, 88 M. 13. But a bill may be filed upon refusal of payment at any time after the taxes can be lawfully demanded even before return of tax roll; but the refusal must have been positive and unequivocal to pay the whole or some part of the tax.—Caldwell v. Ward, 88 M. 378. Not intended that the imperative mandate of the statute should be defeated by affidavit that tax could be collected by other process or that owner did not intend to commit waste within given period or that if he should cut timber intended to there would be enough value left to pay the taxes. Where township tax alone claimed illegal there can be no hardship in injunction, as this tax can be paid under protest and rights preserved thereby.—Rossman v. Adams, 91 M. 69. Cutting of timber not for purposes of husbandry and in denial of rights of complainant in bill filed to restrain commission of waste on the land constitutes waste and is sufficient in itself in the absence of denial to justify the inference that defendant is liable to continue to commit waste and to authorize injunction.—Webster v. Peet, 97 M. 326. In Rossman v. Adams, Mich. Mandamus Cases, 807, writ was granted to compel circuit court commissioner to grant injunction.

See Secs. 100, 117.

Referendum on treasurer's salary.

SEC. 44a. (4040) The provisions of this act relating to the salary of the township treasurer shall not apply in any township in this State until adopted by the electors of said township in the manner herein provided. Upon petition of not less than five per cent of the resident electors of any township, addressed to the township board, it shall be the duty of said board to submit the question of the adoption of the provisions of this act in said township, at the first general or special election held after the receipt of said petition. All votes on the question shall be taken, counted and canvassed in the same manner as votes cast for candidates at said election in said township. The vote upon the proposition of adopting this act shall be by ballot which shall be in substantially the following form:

Petition.

Submission.

Canvass of votes.

Ballot.

"Vote on the proposition of adopting the provisions of an act placing the township treasurer of this township upon a salary in lieu of fees.

Make a cross in the appropriate square below.
To adopt the provisions of said act—Yes ( )
To adopt the provisions of said act—No ( )"

How ballots furnished.

Such ballots shall be furnished by the township board and shall be deposited in ballot boxes provided for that purpose. If a majority of the electors voting upon such proposition shall vote in favor of the adoption of that portion of this act which would place the treasurer thereof upon a salary basis then that portion of this act shall be in full force and effect and not otherwise within such township.

When in force.

History:—Added 1915, p. 320, Act 187, Eff. Aug. 24.

Collection to be before March 1.

SEC. 45. (4041) All taxes shall be collected by the several township and city treasurers or collectors, before the first day of March, in each year.

History:—C. L. '97, 3868.

Supersedes provision of Sub. 12, Sec. 2274 C. L. '15, for extension of time for collection.

The Wayne county treasurer collects state and county taxes assessed in the city of Detroit, instead of the city treasurer.—Act 378, Local Acts of 1879.

Township and city treasurers or collectors have no authority to collect taxes after the expiration of their warrants, and receipts given by them for taxes thereafter cannot be considered as evidence of payment.

There is no provision for the collection of a real property tax by suit after the expiration of the warrant.—Op. Att'y Gen'l, 1903, p. 97.

Personal demand.

Demand on companies.

Charter provisions.

Demand by mail.

Receipt and entry.

Tax on bank shares.

SEC. 46. (4042) For the purpose of collecting the taxes remaining unpaid on the tenth day of January, the said treasurer shall, thereafter during that month, call personally upon each person liable to pay such taxes, if a resident of such township, or at his usual place of residence or business therein, and demand payment of the taxes charged against him. If such person is not a resident of the township, but resides within the county, or an adjoining county, and his residence is known to the treasurer, he shall make such demand either personally or by mail. In cases of companies or corporations demand may be made at the principal or other office of such company or corporation, or by mail directed to such corporation or company, or its principal officer at its usual place of business. In cities where some special provision is made for demand or collection of taxes, the collector or treasurer shall comply with such special provision, otherwise be bound by the provisions of this act. If demand is sent by mail, the amount of the tax shall be stated and the place and time where and when it may be paid. He shall give a receipt for every tax paid, and shall enter in ink the fact of payment, and the date thereof upon his tax roll. In case of taxes assessed upon the shares of the capital stock of any bank he shall call upon the cashier of such bank and demand payment thereof, and thereupon it shall be the duty of such cashier to pay the same, and charge the amount so paid against the shares of stock so taxed.

History:—C. L. '97, 3869.

Demand by mail, proof of.—Clark v. Adams, 33 M. 159. Question of demand under this section and of collection from personal property are foreclosed by decree.—Hughes v. Jordan, 118 M. 27; Hooker v. Bond, 118 M. 255; Shefferly v. Auditor General, 120 M. 155.

Collector's receipt for taxes is an official paper and evidence of the payment of the tax in suits between third parties.—Johnstone v. Scott, 11 M. 232. Stub receipt books are public records.—Burton v. Tuite, 78 M. 363; 80 M. 218. The lawful acts of a de facto tax collector as such are valid whether he was strictly entitled to the tax roll or not.—Stockle v. Silsbee, 41 M. 615. The payment of taxes may be proved by parol. Although the receipt may be used as primary evidence this does not preclude other proof.—Hammond v. Hannin, 21 M. 374.

The tax collector is not obliged to take payment of a given tax in installments. —Sayres v. O'Connor, 124 M. 256.

Where a city charter provides for the collection of personal taxes by process from the receiver of taxes and by levy upon personal property, an action by the city for such taxes will not lie except as specially provided for.—Detroit v. Jepp, 52 M. 458. Legislature shall restrict power of taxation of cities and villages.—Sec. 13, Art. XV, Const.

A new city charter, which repealed the old charter except the provisions relating to schools which are expressly kept in force, is not invalid as failing to provide for levy, collection and return of school taxes in conformity with the general laws of the state.—Kopczynski v. Schriver, 194 M. 553.

It is the duty of an executor to pay the taxes upon real estate of the decedent in his possession pending the settlement of the estate; and where available funds are insufficient he may obtain from probate court authority to raise money by mortgaging the property.—Long v. Landman, 118 M. 174. Taxes levied on mining or manufacturing companies whose charters have expired shall be paid out of the assets by the receiver.—13576n C. L. '15.

As between vendor and purchaser under a warranty deed the obligation is upon the vendee to pay the taxes for the current year where the conveyance was prior to December 1st, and upon the vendor when it was subsequent.—Harrington v. Hilliard, 27 M. 271. Where grantee voluntarily pays taxes which were a lien upon land when he received his deed and brings suit on covenant against incumbrances, grantor may show as a complete defense the invalidity of the tax.—Balfour v. Whitman, 89 M. 202.

Where treasurer receives from tax-payer worthless highway orders in part payment, receipting the taxes and returning them as paid, the taxes are thereby paid, and any suit brought for the amount of the order must be a private controversy between the treasurer and the party who paid them to him. —Staley v. Columbus, 36 M. 38.

Neither can the petitioner take advantage of the fact, if it were a fact, that the township treasurer could have collected the taxes out of personal property within the township.—Nester v. Church, 121 M. 81; Citing Muirhead v. Sands, 111 M. 487; Auditor General v. Sparrow, 116 M. 574; Ball v. Ridge Copper Co., 118 M. 7; Berkey v. Burchard, 119 M. 101.

The authority of the township treasurer under this section is exclusive during the period fixed by the statute, and suit cannot be instituted by the supervisor while the tax warrant is in the hands of the township treasurer.—Twp. of Decatur v. Copley, 133 M. 546.

The statement of a township treasurer on which a levy is made for the amount of a personal tax, is sufficient if the fair import of the statement negatives the presence of other personal property in the township. Godkin v. Corliss, 146 M. 507.

VOLUNTARY PAYMENT: Where any person shall voluntarily and without protest pay to the officer demanding the same and having process for the collection thereof, any sum purporting by such process to be payable by such person for taxes assessed by virtue of any law of this State, neither the officer so collecting nor the officer who issued process nor the officer who made the assessment shall in consequence of such payment be liable in any action on account of any defect of invalidity in the law under which the proceedings are had, or of any defect or irregularities in the said proceedings or in such warrant or process.—4196 C. L. '15. Acquiescence in an assessment and payment of the tax estops the taxpayer from afterwards complaining of it.—Wattles v. Lapeer, 40 M. 624. A purchaser from one whose land has been irregularly assessed is not obliged to pay the tax on account of his vendor nor is he personally liable to seizure of his goods for failure to pay; but if he pays without making known his objections to the proper auditing body before the amount becomes a lien on the land, the payment must be considered voluntary.—Louden v. East Saginaw, 41 M. 18. See also Attorney General v. Burrell, 31 M. 24. Taxes subsequently paid by the holder of a void tax title are voluntary payments and cannot be recovered from the owner of the lands.—Croskery v. Busch, 116 M. 288.

Taxes paid in advance of the time payment can be enforced are voluntary payments and cannot be recovered without statutory permission.—Cox v. Welcher, 68 M. 263.

Payment before officer has authority to enforce collection is voluntary.—Peninsula Iron Co. v. Crystal Falls, 60 M. 79. Money voluntarily paid in the reasonable belief that it is due and after investigation or the opportunity thereof, and without fraud on the part of the recipient cannot be recovered as paid under misapprehension.—Wheeler v. Hathaway, 58 M. 77.

Payment is voluntary and therefore not recoveable, where the owners of the property appeared at a tax sale, and without protest took part therein, and bid off the property.—H. M. Loud & Sons Lbr. Co. v. Vienna Twp., 120 M. 382.

INVOLUNTARY PAYMENT: Payment to a public officer in compliance with a demand accompanied by a threat of immediate and actual enforcement is in no sense a voluntary payment; and when the claim is unlawful and made under color of office an action lies for its recovery.—First National Bank of Sturgis v. Watkins, 21 M. 483. Action for money had and received will lie against the city to recover money involuntarily paid upon an illegal assessment where the city has failed by the irregularity of its proceedings to obtain any jurisdiction over the subject matter of the assessment. Payment made upon an illegal assessment under threat of immediate seizure and sale of the property to satisfy the same is not voluntary.—Nickodemus v. City of East Saginaw, 25 M. 456. Payment made on the demand of an officer under legal process is not voluntary although made before any levy. A party is not bound to await an arrest or seizure, but many assume that the officer will execute the process on which he made demand.—First National Bank of Sturgis v. Watkins, 21 M. 483. See also McKee v. Campbell, 27 M. 497. No protest is necessary in such case to authorize an action to recover back the money illegally demanded; but where payment is made without protest no interest can be claimed until after demand or suit. —Atwell v. Zeluff, 26 M. 118. Payment of a personal tax under protest and to avoid the immediate seizure of goods is not a voluntary payment and suit can be brought against the collector to recover it while it is in his hands.—Lyon v. Receiver of Taxes, 52 M. 271. The attempt to compel payment when there is no legal burden is regarded as a legal injury, and payment made to avoid the seizure and sale of property to pay the wrongful claim can be recovered as an extorted sum for which there was no consideration.—Specific protest is not required where payment is involuntary and made under legal duress.—Cox v. Welcher, 68 M. 263. Demand of payment by an officer having a warrant involves an implication that payment will be enforced if not made, and the authorities do not require an actual levy or proof that a levy could be made on tangible property. If the party yields to the legal menace it cannot be presumed in favor of the exactor of payment that he could have found nothing to levy on or that there was no means of enforcement.—Babcock v. Township of Beaver Creek, 64 M. 601.

There is no distinction between the terms "voluntarily paid under protest" and "paid under duress of levy" when the terms are used with reference to involuntary payment of taxes.—Godkin v. Doyle Township, 143 M. 236.

The principle of involuntary payment of taxes does not permit the recovery of a valid tax paid by the tax-payer, which he is in duty bound to pay, merely because of an irregularity in the method of collection.—Godkin v. Doyle Township, 143 M. 236.

The statute authorizing payment of taxes under protest does not apply to drain taxes.—Williams v. Merritt, 152 M. 621.

See also notes under Secs. 53 and 58, voluntary payments.

An action by a township for delinquent personal taxes of a corporation will not lie against the trustee of the corporation where the tax is assessed in the name of the corporation.—Homer Township v. Smith, Trustee, 141 M. 586.

As between mortgagees, payment of taxes to protect the several interests could not be considered a voluntary payment, as it inures to the benefit of the first mortgagee.—Noeker v. Howry, 119 M. 626; Giff v. Howry, 119 M. 630. The taxes were a claim paramount to both mortgages. They are by law made a lien upon the land and either mortgagee might protect his mortgage by paying them, and by doing so would succeed to the lien upon the land which would take precedence over both mortgages.—Noeker v. Howry, 119 Mich. 629.

PAYMENT BY CASHIER: Mandamus will not lie to compel bank cashier to pay taxes assessed against stockholders, the remedy provided by the act for the collection of such taxes being clear and specific.—Eyke v. Lange, 90 M. 592; 104 M. 26. Section imposes upon bank cashier an official and not a personal duty. Upon demand it is duty of bank to pay the tax, and if performance must be enforced by law, suit should be brought against bank and not against cashier. —Muskegon v. Lange, 104 M. 19. Where personal property is sold or mortgaged for its full value before personal taxes thereon become a lien thereon the tax cannot be collected of the purchaser or mortgagee. In case of bank stock collection cannot be made of the bank as it could not reimburse itself against the stock, which was not, after the sale, the property of the person assessed and liable for the tax. Suit to enjoin collection from bank not necessary as the facts can be interposed as a defense in any action to collect of the bank.—St. Johns National Bank v. Bingham Township, 113 M. 203.

See Sec. 53.

The legislature has authority to empower the township treasurer to receive all moneys belonging to the township and to take the necessary steps to obtain the same.—Stambaugh Twp. v. Iron Co., 153 M. 104.

Seizure of personal property for taxes.

Sale of property seized.

Notice of sale.

Surplus proceeds.

Return of unpaid taxes.

Collection by suit.

Sec. 47. (4043) If any person, firm or corporation shall neglect or refuse to pay any tax assessed to him or them, the township or city treasurer, as the case may be, shall collect the same by seizing the personal property of such person, firm or corporation, to an amount sufficient to pay such tax, fees and charges for subsequent sale, wherever the same may be found in the State, and from which seizure no property shall be exempt. He may sell the property seized to an amount sufficient to pay the taxes and all charges, in the place where seized, or in the township or city of which he is treasurer, at public auction, on giving public notice of the same at least five days previous to the sale, by posting written or printed notices in three public places in the township, village or city where the sale is to be made, which sale may be adjourned from time to time if he shall deem the same necessary; and in case property shall be seized and advertised as herein directed, during the life of the warrant, the sale may take place at any time within six days after the expiration thereof. If it becomes necessary to sell personal property which brings more than the amount of taxes and charges, the balance shall be returned to the person, firm or corporation from whose possession the property was taken, except as hereinafter provided. If the property so distrained cannot be sold for want of bidders, and in such cases only, the treasurer shall return a statement of the fact, and such tax shall be returned as unpaid. The township treasurer, if otherwise unable to collect a tax on personal property, may sue the person, firm or corporation to whom it is assessed, in the name of the township, village or city, and garnishee any debtor or debtors of such person, firm or corporation. The tax roll shall be prima facie evidence of the debt sought to be recovered: *Provided*, That when any person having possession of the personal property of any other person, firm or corporation shall be assessed for such property and shall be obliged to pay the taxes thereon, such person, firm or corporation so paying the taxes, may recover of the person, firm or corporation for whose benefit the taxes were paid, the money so paid, with the interest thereon, in an action of assumpsit: *Provided further*, That in case where levy is made, as hereinbefore provided, for taxes assessed upon land, the levy shall be released if, within ten days after it is made, the persons having the title to said land shall deliver to the Commissioner of the State Land Office a deed conveying the land to the State as to an individual, free from all mortgages or liens whatsoever, and in such case the taxes thereon shall be returned as in the case of other taxes unpaid upon lands, and the Auditor General shall charge back to the county all local taxes on said land and shall cancel the State taxes thereon; and in case land is so deeded to the State it shall thereafter be subject to all the provisions of law governing lands deeded to the State by the Auditor General under the provisions of section one hundred twenty-seven of act two hundred six of eighteen hundred ninety-three as amended: *Provided further*, That in case the land is deeded to the State as herein provided the Board of State Auditors shall audit and allow the actual expenses of the township treasurer incurred in making the levy on said land and compensation therefor at two dollars per day, the account therefor to be certified by the Commissioner of the State Land Office, and the amount thereof shall be paid out of the general fund of the State.

Tax roll evidence of debt.

Proviso.

Levy for taxes on land.

Conditions of release.

Land deeded to State.

Expense, how paid.

History:—Am. 1895, p. 521, Act 229, Imd. Eff. May 31;—C. L. '97, 3870;—Am. 1899, p. 335, Act 215, Eff. Sept. 23.

Levy on crops.—12870n C. L. '15; sale of.—12863n C. L. '15. Levy on shares.—12873-5n, C. L. '15. See Newberry v. D. & L. S. Iron Co., 17 M. 141. Sale of perishables.—12871n C. L '15. Resisting officer.—14994 C. L. '15. As to the application of 12855n C. L. '15, to a levy on property upon which there is a chattel mortgage in view of the provision of this section that no property shall be exempt from seizure for taxes—quere.

Levy cannot be made after return day.—Blair v. Compton, 33 M. 424. Where lands are assessed as non-resident ("or owner unknown") collector has no authority to levy upon any property to satisfy a tax so assessed.—Tweed v. Metcalf, 4 M. 579. An officer's release of a levy discharges it.—Weber v. Henry, 16 M. 399. A levy effected by committing a trespass is bad.—Bailey. v. Wright, 39 M. 96. The power of the township treasurer to collect the taxes or to sue therefor is confined to the time the warrant is in force.—Putnam v. Township of Fife Lake, 45 M. 125. A levy upon personal property for collection of a tax is prima facie a satisfaction of the tax.—Henry v. Gregory, 29 M. 68. See Farmers' and Mechanics' Bank v. Kingsley, 2 Douglass, 379. Growing crops are a part of the realty, but for the purpose of levy and sale on execution are treated as personalty.—Preston v. Ryan, 45 M. 174.

The tax roll is itself as complete and adequate as an execution on a judgment would be if there are goods and chattels within the treasurer's jurisdiction.—Staley v. Columbus, 36 M. 38. Same rule must be applied to sale by town treasurer to satisfy tax as to judicial sales. So held where two horses not matched and either of which was worth more than the tax, were sold together and not offered separately.—Leaton v. Murphy, 78 M. 77. Exemption from execution under 12858n C. L. '15 does not release property from liability to seizure and sale for taxes for which its owner is liable.

A tax sale by a city treasurer for unpaid city taxes on personalty conveying property of the value of $8,000 for an unpaid tax of less than $200, the title not having been acquired by the owner until after the time fixed by law for the completion of the assessment roll, are facts sufficient to sustain the ruling that the sale was not a legal one, in absence of proof of the regularity of the proceedings taken to collect the tax.

The same rule must be applied in sales for delinquent city taxes as is applied in judicial sales, and only sufficient of the property sold to pay the tax. Starr et al. v. Shepard et al., 145 M. 302.

No property of the person liable for a tax is exempt from seizure and sale for taxes. If the provisions of this section were fully observed by collecting officers there would be much less unpaid taxes returned.

Where the supervisor's warrant is fair on its face township treasurer is not personally liable for enforcing the collection of an excessive tax.—Byles v. Genung, 52 M. 504. But warrant goes only to extent of protecting him from personal liability as trespasser or wrong-doer.—LeRoy v. East Saginaw City Railway, 18 M. 233. Collector is protected by process that is fair on its face against irregularities except his own.—Bird v. Perkins, 33 M. 28. A tax assessment is in the nature of a judgment and cannot be assailed for fraud or irregularity in a suit against an officer who holds process fair on its face for enforcing a tax based upon it.—Moss v. Cummings, 44 M. 359. Collector not liable in trover for property seized under tax roll and warrant fair upon their face; but roll and warrant are not fair on their face when for a tax levied under an invalid law.—Mogg v. Hall, 83 M. 576. Collector is not liable for value of chattels seized for taxes under warrant fair on face even though demand for return thereof be made before sale.—Curtiss v. Witt, 110 M. 131. A warrant addressed to the "treasurer of the township of ....," signed by the supervisor of St. Joseph township and annexed to the tax roll of that township is not fatally defective.—First National Bank of St. Joseph v. Township of St. Joseph, 46 M. 526; Auditor General v. Stiles, 83 M. 460. Further as to warrant see Clark v. Axford, 5 M. 182.

A law prescribing who shall be liable for the payment of taxes and whose property may be levied on therefor impliedly forbids the collector to seize the property of others or by act or omission make the tax a charge on it, and the owner is at liberty to buy and sell in reliance on the officer's implied duty towards him, and to understand that the latter is not protected by his commission unless he keeps within the powers given by it.—Raynesford v. Phelps, 43 M. 342. A mere sale of another's hay in the mow under a tax warrant does not amount to a conversion where the owner did not acquiesce and his possession was not disturbed. A sale of a growing crop might be different.—Mills v. Van Camp, 41 M. 645. Assessment to firm which has been succeeded by corporation is valid against the corporation and it may be enforced as such.—Petrie Lumber Co. v. Collins, 66 M. 64. Taxes paid under protest after seizure of property, collector's warrant having expired before seizure may be recovered.—Phillips v. New Buffalo, 68 M. 217. A note taken by a township treasurer in his own name on the sale of property for taxes is void in his hands on the ground of public policy.—Chapman v. Remington, 80 M. 552. After levy and agreement with city authorities, check for amount was deposited with city treasurer and amicable suit instituted. Held, payment was involuntary.—Gebhart v. East Saginaw, 40 M. 336.

Treasurer seized personal property belonging to plaintiffs to satisfy taxes levied upon real estate not owned by nor listed to them, which they paid under verbal protest to secure a release of their property and brought suit against township to recover, prior to which treasurer had paid State and county taxes to county treasurer. Held, payment was involuntary; that treasurer's action was not an attempt to collect an illegal tax assessed against plaintiff's property or against them personally, nor did his warrant direct or authorize him to demand or enforce collection against them; that the taxes were not assessed to them or against their property and they had no occasion to appear before town board in relation thereto nor to deliver to treasurer statutory protest; that the township by its officers coerced payment without any claim against plaintiffs or their land, and without even color of authority to take plaintiff's money, and that the fact of payment to the county treasurer of the State and county taxes thus collected was immaterial to the issue; that the section providing for bringing suit within thirty days after payment of tax under protest does not apply to this case, and the defendant stands in no more favorable position than if it had received plaintiffs' money under a threat to take or sell their property under pretense of legal authority so to do without any assessment roll or warrant whatever.—Babcock v. Township of Beaver Creek, 65 M. 479. Township is liable in action of assumpsit to recover back money illegally collected by the treasurer in his official capacity for taxes illegally assessed.—Daniels v. Watertown, 55 M. 376.

Personal property of a railroad is liable to seizure and sale for unpaid taxes and the company's coal supply is not exempt as a part of the entirety. "Person" includes bodies corporate and politic.—C. & N. W. Ry. Co. v. Ellson, 113 M. 30. Where personal property has been levied upon to satisfy tax on bank stock which is claimed to be illegal and void the remedy at law is inadequate. An action of trover for the value of the property seized would raise the question or complainant might pay the amount of the tax under protest and test its validity in an action to recover back the amount paid.—Hagenbuch v. Howard, 34 M. 1; see also Mears v. Howarth, 34 M. 19. Where land was assessed to one corporation the action of township treasurer in seizing property of another corporation who owned the property assessed held lawful (corporation known by both names).—Iron Star Co. v. Wehse, 117 M. 487. Goods assigned for benefit of creditors are exempt from seizure to satisfy taxes against the assignor. —Lyon v. Receiver of Taxes, 52 M. 271. But the assignment must have been made before the first day of December in the year of assessment; see Sec 40.

Where one, on the day fixed for the sale of his property for taxes, sent his representative to attend the sale, who, without protest, took part in the bidding and upon the property being sold to him informed the treasurer that if he would go to the office of the owner in another township he would receive the amount of the bid, such owner could not, after paying the treasurer as agreed, but under protest, claim that the payment was involuntary and maintain an action to recover the amount so paid.—Loud & Sons Lumber Co. v. Township of Vienna, 120 M. 382.

REPLEVIN: No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, etc.—14332n, 13081n C. L. '15, does not apply where property seized belongs to one having no relation to the tax assessed.—Travers v. Inslee, 19 M. 98. Nor where there could have been no valid tax levied.—LeRoy v. East Saginaw City Railway, 18 M. 233. Nor where there was no jurisdiction to levy the tax.—McCoy v. Anderson, 47 M. 502. But the mere fact that the tax is invalid is not sufficient to authorize replevin.—Hill v. Wright, 49 M. 230. Prohibition applies only where valid tax might have been imposed.—LeRoy v. East Saginaw City Railway, 18 M. 233. Applies only to cases where the property seized is that of the person or of one in privity with the person against whom the tax was assessed.—Travers v. Inslee, 19 M. 98.

Replevin will not lie for property seized by virtue of a writ, fair on its face, when it appears that the property seized is subject to seizure on such process if valid.—Northwestern Cooperage and Lumber Co. v. Scott, 123 M. 357.

Property being rightfully assessed, replevin will not lie.—Hood v. Judkins, 61 M. 575. But lies for property seized to satisfy a void tax.—Boyce v. Cutter, 70 M. 539. Does not preclude replevin by one who is a stranger to the tax and not in privity with the person assessed. Purchaser of personal property before lien for taxes assessed thereon has attached is not in privity with the vendor so as to prevent his bringing replevin against the collector who has seized the property for such taxes.—Tousey v. Post, 91 M. 631. Replevin of property seized to satisfy a void tax is a proper remedy.—Lantis v. Reithmiller, 95 M. 45.

Where a tax levy inflicts an injury cognizable by law, the injured party must seek redress otherwise than by an action of replevin for property seized for the tax. The statutory provision against bringing replevin in case of seizure for taxes cannot be defeated by a mere claim that the tax is invalid if it is apparently regular; and where replevin is brought it is proper on quashing the writ to give judgment for defendant for the amount of the tax lien.—Hill v. Wright, 49 M. 229. Replevin will not lie for saw logs seized to satisfy taxes assessed in town where logs were liable for assessment, which assessment appears to be regular and valid.—Hill v. Graham, 72 M. 659.

Replevin will not lie where tax roll and warrant appear regular upon their face. —West Michigan Lumber Co. v. Dean, 73 M. 459; Thayer Lumber Co. v. Dean, 73 M. 463; Boyce v. Peterson, 84 M. 490; Fletcher v. Post, 104 M. 424; Forster v. Brown, 119 M. 86. Even though claimed to be held by virtue of a county treasurer's warrant, the issuance of which was upon an insufficient return by a township treasurer.—Boyce v. Stevens, 86 M. 549. The vendee in a bill of sale made without consideration and for the express purpose of defeating the collection of taxes upon the goods which remained in the possession of the vendor cannot maintain replevin for the property described in such bill and which is seized for taxes.—Gray v. Finn, 96 M. 62. Replevin will not lie for the recovery of property seized for a tax assessed upon a piece of unoccupied land which was assessed in one parcel to the owner of the record title, a part thereof having been transferred to a son by an unrecorded deed, the property seized belonging to the father.—Scott v. Wheland, 96 M. 624. Regularity of proceeding anterior to a warrant cannot be determined by trover or replevin.—Curtiss v. Witt, 110 M. 131. Validity of tax levied in pursuance of law cannot be tested in replevin. —Roberts v. Denoi, 118 M. 544. One in rightful possession of personal property as lessee can maintain replevin in case such property is seized to satisfy taxes assessed against the lessor.—Whittaker v. Fuller, 96 M. 141. Husband may maintain replevin against an officer for wife's clothing purchased with his money or upon his credit and seized upon a tax warrant for taxes assessed against wife's separate property.—Smith v. Abair, 87 M. 62.

SUIT: Indebitatus assumpsit is the proper form in which township treasurer may bring suit in the name of the township for taxes, the count explaining the subject matter of the debt; but a special declaration is not requisite.—Putnam v. Township of Fife Lake, 45 M. 125. In suit for collection of taxes on personal property collector may testify to the fact and time of making his return. The production and identification of the tax roll and of the assessment and levy of such a tax thereon against defendant makes a prima facie case. In suit based upon county treasurer's warrant, collector must show that he made verified return of unpaid personal property taxes.—Muskegon v. Martin Lumber Co., 86 M. 625. Collector may sue for taxes on personal property, but as to real property the remedy as provided by statute must be resorted to.—Sturgis v. Flanders, 97 M. 546.

Treasurer has no authority to bring suit after his original or supplemental warrant has expired. Suit can only be resorted to when person assessed has no property that can be reached under the warrant or when he resides beyond the treasurer's jurisdiction.—Port Huron v. Potts, 78 M. 435. Personal tax assessed to executors may be recovered in an action against executor though he has distributed the estate since the assessment.—Orion Township v. Axford, 112 M. 179. Judgment for personal tax may include interest from time it became due and payable. Tax collector called upon delinquent tax-payer after the expiration of his warrant for the tax assessed upon personal property which he promised to pay. Held to be a sufficient demand of payment to warrant commencement of suit for its collection after its return to the county treasurer and the issuance of a new warrant which was still in force and which suit is not prematurely brought.—Grand Rapids v. Welleman, 85 M. 234. Mandamus will not be granted to review an order of the trial court in attachment proceedings instituted to enforce collection of taxes denying a motion to quash based upon the merits and accompanied by a stipulation of facts.—Martin Lumber Co. v. Menominee Circuit Judge, 116 M. 354. Action for delinquent personal taxes will not lie except against the person assessed.—Township of Laketon v. Akeley, 74 M. 695.

During the period fixed by this section the authority of the town treasurer is exclusive, and suit cannot be instituted by supervisor during this time.—Decatur v. Copley, 133 M. 546.

There is no distinction between the right of the treasurer to levy for special assessments and for other taxes.—Mich. Lake Superior Power Co. v. Atwood, City Treasurer, 126 M. 651.

See Secs. 40, 48, 49.

Collector's fee for sale.

SEC. 48. (4044) In case of a distress and sale of goods and chattels, for the payment of any tax, the treasurer or other collecting officer may also collect on such sale one dollar and fifty cents over and above the tax, as his fees for making such sale, which fees and percentage hereinbefore provided shall be in full for his services in collecting such taxes; and in case payment of such tax shall be made after the distress and before the sale, it shall be lawful for such treasurer or collecting officer to require the payment of one dollar and fifty cents as his fee for making such distress, and to enforce payment of the same, if need be, by making sale notwithstanding the tax shall have been paid. And whenever any personal property having been assessed to any person in any township or ward in this State shall be removed therefrom before the taxes assessed thereon shall be collected, and there being no other personal property sufficient in said township or ward whereon the treasurer or other collecting officer can levy and collect said taxes, or any of them, he shall have full power, and it shall be his duty to make a statement, duly certified by him to be correct and true, showing that personal property has been assessed to such person, naming him, the valuation thereof, the various taxes thereon, and the total thereof, as appears from the roll in the hands of such treasurer, and that such property has been removed from such township, ward or city since the assessment thereof, and that the taxes or some portion of them has not been paid; which statement shall be witnessed and acknowledged in the same manner as deeds of real estate are acknowledged, and shall be received in all courts and other places as evidence of the facts therein contained, without proof of its execution, and shall be *prima facie* evidence of the validity of the tax therein named against the person therein named, and shall be full and ample authority to the treasurer or other tax collector to whom it shall be sent to levy and collect the same in the same manner as other personal taxes are collected by him when spread upon his own roll. Such statement may be sent to the township or city treasurer, or other collecting officer of any township or city in this State, where the person against whom such assessment was made may have property, and the treasurer, or other collecting officer to whom such statement shall have been transmitted, shall, upon the receipt of the same, proceed to collect said taxes out of any property belonging to the owner of such property so taxed as aforesaid, within his jurisdiction, liable to be seized for taxes, together with double collection fees therefor, and the further

Sale for fee.

Collection of taxes on personal property removed.

Valid statement of taxes on personal property removed.

Collection, where found.

Fees.

sum of twenty-five cents to defray the expense of transmitting the taxes so collected as hereinafter provided, and shall give his receipt therefor. The said treasurer, or other collecting officer, shall thereupon transmit the taxes, and one-half of the collection fees as aforesaid collected, to the township treasurer, or other collecting officer, from whom he received such statement, and the latter shall, upon the receipt of said taxes and collection fees, mark the said taxes in ink as paid upon his tax roll, and the date of the receipt of the same, retaining the collection fees so received as aforesaid, as his fees in the matter of the collection of said taxes. Executions issued upon judgments rendered for any tax, may be levied upon any property, without exemption, the same as though seized for sale under warrants issued for the collection of taxes by township supervisors, and collected in the same manner, in all other respects, as provided by law for the collection of judgments.

Accounting.

Levy of execution.

History:—C. L. '97, 3871.

The statement of a township treasurer on which a levy is made for the amount of a personal tax, is sufficient if the fair import of the statement negatives the presence of other personal property in the township.—Godkin v. Corliss, 146 M. 507.

This section provides for the collection of taxes assessed against personal property by a levy upon the property of the person assessed, in any place in this state where the tax-payer may have property.—Garfield Twp. v. A. B. Klise Lumber Co., 219 M. 31.

Sec. 49. (4045) Whenever a surplus arising from the sale of any property distrained for taxes, shall be claimed by any other than the person for whose tax such property was sold, and such claim shall be contested, either of the contestants may prosecute an action against the other, as for money had and received and in such action the rights of the parties to such surplus shall be determined. For the purpose of such action the defendant shall be deemed to be in possession of the surplus in the hands of the treasurer, and upon the presentation to said treasurer of a certified copy of the final judgment rendered in such action he shall pay over the same to the party recovering such judgment, and no such treasurer shall be liable to any claimant of such surplus, the right to which is contested as provided in this act, until he shall have refused to pay over such surplus upon the production of a certified copy of the judgment as aforesaid. In any action brought pursuant to this section no other case shall be joined, nor shall any set off be allowed, and if an execution issue on a judgment so rendered, it shall direct the costs only of such action to be levied by virtue thereof.

Claim for surplus of sale.

Defendant deemed in possession.

Treasurer not liable.

Rule in action.

History:—C. L. '97, 3872.

Sec. 50. (4046) In case any township treasurer shall neglect to give either of the bonds required, or shall die, resign or remove out of the township or become unable to discharge the duties of his office, the township board shall forthwith appoint a new treasurer, who, on giving the required bonds, shall execute the duties of the office for the remainder of the year and until his successor is elected and qualified.

Disability of township treasurer.

Township board to appoint.

The township clerk shall immediately notify the county treasurer of such appointment.

History:—C. L. '97, 3873.
See Sec. 43.

Sheriff to collect in certain cases.
Bonds.

SEC. 51. (4047) In case the township treasurer shall neglect or refuse to file his bond with the county treasurer, in the manner and within the time prescribed by law, and the township board shall fail to appoint a treasurer who shall give such bond, and deliver a receipt for the same to the supervisor by the tenth day of December, the supervisor shall deliver the tax roll with the necessary warrant directed to the sheriff of the county, who shall, before he receives said tax roll, execute and deliver like bonds required of the township treasurer, and make like collections and returns, and shall be entitled to the same compensation on all taxes collected by him by virtue of such warrant as is allowed to the township treasurer, and for the purpose of collecting the same, shall be vested with all the powers conferred upon the township treasurer, and suit may be brought on such sheriff's bond under the same circumstances as on those of a township treasurer.

Compensation.

Powers.

History:—C. L. '97, 3874.
The collection of taxes by the sheriff being a duty foreign to his position invests him with a new office not within the contemplation of sureties on his official bond as sheriff.—White v. East Saginaw, 43 M. 567.

When collection incomplete.

SEC. 52. (4048) In case the township treasurer shall not collect the full amount of taxes required by his warrant to be paid into the township treasury, such portion thereof as he shall collect shall be retained by him to be paid out for the following purposes: The amount of school taxes collected to be paid on the order of the school district officers, the amount collected for general township purposes to be paid on the order of the township board, the amount collected for highway purposes to be paid on the order of the commissioner of highways countersigned by the township clerk or supervisor, and the amount collected for any special fund to be paid on the order of the proper officer, but in no case shall the amounts collected for any one fund be paid on the orders drawn on any other fund.

Amount collected, how disbursed.

History:—C. L. '97, 3875.
Township clerk to keep separate account with each fund.—2117 C. L. '15.
Where a tax payment is expressly made to satisfy a particular assessment the collector if he receives it, must apply the money to the purpose specified and no other.—Fuller v. Grand Rapids, 40 M. 395.

Any person may pay taxes.

SEC. 53. (4049) Any person may pay the taxes, or any one of the several taxes on any parcel or description of land, or on any undivided share thereof, and the treasurer shall note across the face of the receipt in ink any portion of the taxes remaining unpaid. He may pay any tax, whether levied on personal or real property, under protest, to the treasurer, specifying at the time in writing, signed by him, the grounds of such protest, and such treasurer shall minute the fact of such protest on the tax roll and in the receipt given. The person paying under such protest may, within thirty days and

May pay under protest.

Person paying to sue township.

not afterwards, sue the township for the amount paid, and recover, if the tax is shown to be illegal for the reason shown in such protest. When payment of the taxes on any parcel or description of land or on any undivided share thereof, is made to any city, village or township treasurer, said treasurer shall place or cause to be placed upon the face of the receipt the following certificate: "I hereby certify that application was made to pay all taxes due and payable at this office on the description .... shown in this receipt.

Signed ...., Treas."

Receiving officer to show by whom paid.

Person having lien on land may pay.

Any person owning an undivided share or other part or parcel of real property assessed in one description may pay on the part thus owned, by paying an amount having the same relation to the whole tax as the part on which payment is made has to the whole parcel. The person making such payment shall accurately describe the part or share on which he makes payment, and the receipt given, and the record of the receiving officer shall show such description, and by whom paid; and in case of the sale of the remaining part, or share for non-payment of taxes, he may purchase the same in like manner as any disinterested person could. Any person having a lien on property may, after thirty days from the time the tax is payable, pay the taxes thereon, and the same may be added to his lien and recovered with the rate of interest borne by the lien. A tenant of real estate may pay the taxes thereon and deduct the same from his rent, unless there be an agreement to the contrary. Such payment may be made to the township treasurer while the tax roll is in his hands, or afterwards to the county treasurer. The receipt given shall be evidence of such payment.

History:—C. L. '15, 3876;—Am. 1901, p. 178, Act 130, Eff. Sept. 5; Am. 1913, p. 111, Act 76, Eff. Aug. 14.

When an application is made to pay the taxes on a parcel of land that is assessed with other lands in one description, the treasurer should divide the taxes on the entire description by the area of the land assessed; for instance, if four lots of equal size are assessed together, the payment of the taxes on one lot would be one-fourth of the total tax on the four lots; or should a twenty acre parcel and a forty acre parcel be assessed in one description, the payment of the taxes on the twenty acre parcel would be one-third of the total tax on the description. Should the treasurer divide the tax on any other basis he would become practically an assessor, which the law does not permit.—See letter of the Auditor General, April 15, 1923.

See notes under Secs. 46 and 58, voluntary and involuntary payments.

Collecting officer not liable when taxes are paid voluntarily.—Act 6, Laws 1873. (4196 C. L. '15) officer to pay over such taxes the same as if regular.—Montpelier Savings Bank v. Quinn, Treasurer, 149 M. 701.

Assessment to and payment of taxes by claimant is insufficient to continue an adverse possession previously held by his grantor.—Miller v. Davis, 106 M. 300.

One who has a lien on lands has no right to intervene to pay the tax unless it is manifest that the land owner will not.—Pond v. Drake, 50 M. 302. But this section fixes the time when he may do so. Taxes paid by the mortgagee which should be paid by the mortgagor may be added to increase the charge upon the mortgaged premises.—Payne v. Avery, 21 M. 524. It is competent for a mortgagee to protest his mortgage interest against taxes, and the amount so paid may properly be included in a foreclosure decree.—Vaughn v. Nims, 36 M. 297; Walton v. Bagley, 47 M. 385. See, also, Farwell v. Bigelow, 112 M. 285; Fuller v. Kane, 110 M. 549. Taxes can generally be enforced only by the statutory remedies, and payment made by the mortgagee of land does not necessarily give him a right of action against the mortgagor as for money paid to his use, since the mortgagee would not have been personally liable for the payment of the taxes and the mortgagor's failure to pay them would only have rendered the property subject to seizure while the warrant was good for their collection.—Raynesford v. Phelps, 43 M. 342.

three-fourths of the amount of the tax assessed against the land and receive receipt therefor, on the theory that he owned only three-fourths of the land described.—Roberts v. Auditor General, 217 M. 695.

Where a township collected a void school tax and was later compelled by litigation to return the same to the tax-payer, the costs of the litigation were not chargeable to the school district, since the statute places the burden of spreading and collecting school taxes upon the township.—Twp. of Coe v. Dist. No. 3, 221 M. 35.

Where taxes are assessed under the general tax law, paid under protest and an action brought to recover the same, such action must be brought against the township and not against the township treasurer.—Powers v. Rockwell, 171 M. 655.

Plaintiffs are not precluded from bringing an action to recover taxes paid under protest because the treasurer did not endorse such protest on the tax roll.—Bank of Tustin of J. M. Perry & Co. v. Twp. of Burdell, 184 M. 131.

The objection made by a mining company that other property was assessed at less than its true value and that its property was relatively over-valued, in a case where the valuation of the property of the mining company was fixed by the state tax commission under the provisions of Act 114 of Public Acts of 1911, is not sufficient to declare the assessment invalid in the absence of sufficient proof of fraudulent action by the board of tax commissioners.—Newport Mining Co. v. City of Ironwood, 185 M. 668; Sunday Lake Iron Co. v. Twp. of Wakefield, 186 M. 626.

Where taxes are paid under protest, in order to recover the same, the grounds of protest must be stated specifically at the time of payment.—Kelsey v. Twp. of Burns, 223 M. 173.

PART PAYMENT: Where part of the tax only is paid it should be all of certain taxes or on a definite part of the land, or if neither is practicable, payment may be accepted and receipted for on an expressed undivided interest in the description. In such cases the treasurer should note across the face of the receipt in ink (receipts should never be written with a pencil) the items of tax unpaid, or the definite or undivided part of the description on which the tax remains unpaid. The importance of strict compliance with the law in this regard should be apparent to every receiver of taxes.

See Secs. 46, 59, 107, 117.

The tax collector is not obliged to take payment of a given tax in installments. Sayers v. O'Connor, 124 M. 259.

Collecting officer to settle with county treasurer March 1.

SEC. 54. (4050) Within one week after the time specified in his warrant the township treasurer or other collecting officer shall pay to the county treasurer all State and county taxes collected, and within the same time shall make his statement of unpaid taxes upon real and personal property as required in the following section:

History:—Am. 1897, p. 283, Act 225, Imd. Eff. May 29; C. L. '97, 3877; Am. 1901, p. 278, Act 193, Eff. Sept. 5.

A collector who has received state and county taxes is required to pay the sums received over to the county treasurer in the absence of legal protest from tax-payers and cannot retain it on his claim that the collection was illegal or irregular.—Berrien Co. Treasurer v. Baunbury, 45 M. 79. Township orders received in the township treasury as money must be accounted for as money received.—Byles v. Golden Township, 52 M. 612.

Where one whose duty it is to collect and pay to the proper authorities municipal taxes, by mistake pays to the county treasurer a sum which should have been paid to the city treasurer it is held that he may proceed by mandamus, in his individual name, to compel the county treasurer to make restitution.—Webster v. Wheeler, 119 M. 601.

Mandamus will not lie to compel county treasurer to refund taxes unlawfully levied if there is any issue involved which should go to a jury.—Byles v. Golden Township, 52 M. 612.

In case of taxes voluntarily paid, but regarding which there is an irregularity or any want of authority to assess or levy, amount received should be paid over the same as if no such irregularity or want of authority existed.—4114 C. L. '15.

See Secs. 42, 44.

ON THE RETURN OF DELINQUENT TAXES.

Delinquent taxes on land.

SEC. 55. (4051) If the township treasurer or other collecting officer shall be unable to collect any of the taxes on his roll, assessed on real property, he shall make a statement of the same with a full and perfect description of such property, as assessed upon said roll, with the several taxes assessed upon each parcel thereof, which statement shall be verified by the affidavit of such treasurer or collector that such taxes

Verification of statement.

remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels liable to pay such sums whereupon he could levy the same. The said treasurer or collector shall also make a statement showing the taxes upon personal property remaining unpaid, and the names of the persons against whom assessed, and the amount against each; and in such statement shall set forth the amount of all moneys collected by him on account of taxes, which statement shall be verified by the affidavit of such treasurer, in which he shall state in substance that the sums mentioned in such statement as uncollected remain unpaid; that he has not upon diligent inquiry, been able to discover any goods or chattels belonging to the person liable to pay such sums whereupon he could levy the same, and that the amount of moneys collected by him upon such tax roll is truly stated therein. The county treasurer shall immediately compare such statements with the said tax roll, and if he finds the same to be correct, he shall add to each of them a certificate showing that he has examined and compared such statements with the said tax roll and found them correct, and shall file such statements in his office: *Provided,* That the county treasurer shall, at the time of making such comparison, and at no other time, reject any tax upon any land which shall have been twice assessed, or upon any parcel which shall be so erroneously or defectively described upon the tax roll that it cannot be correctly and easily ascertained. The county treasurer shall give to the township treasurer a receipt, stating the amount of moneys paid to him by such treasurer, for which the township shall receive a credit on the books of the county treasurer, and he shall also give the township treasurer a statement of all taxes rejected by him, the amount of delinquent taxes returned, and the amount of any unpaid taxes on personal property, which receipt and statements shall be the vouchers of such treasurer of the amounts specified therein.

Return of delinquent personal taxes.

Verification.

County treasurer shall compare.

Certificate.

When county treasurer may reject tax.

Receipt to collector.

Collector's voucher.

History:—C. L. '97, 3878.

The treasurer's return of delinquent lands must describe the lands as they are described on the tax roll. He has no authority to change the descriptions in any particular. The descriptions should be entered on his return in the numerical order of the sections followed by descriptions in cities and these by descriptions in villages, if any, concluding with platted lands not in corporate limits, if any. If part payment of the taxes has been made the return should not include the taxes which have been paid or the part of the description on which all the taxes have been paid.

City treasurers have no more authority for withholding their returns after March 1 than have township treasurers.

A return which is neither signed by the collector nor verified by his oath held to be unofficial and of no legal value.—Upton v. Kennedy, 36 M. 215. Failure of township treasurer to verify his return of delinquent tax land is fatal to sale.—Seymour v. Peters, 67 M. 415.

Failure of the township treasurer, in making his return to the county treasurer for unpaid taxes, to make a sworn statement required by law relative to such taxes, was not fatal enough to prevent the collection of taxes.—Robinson v. Taber, 198 M. 767.

Where the township treasurer's return does not show that personal demand was made for the taxes, but was in statutory form, held sufficient, as if personal demand was necessary it must be presumed to have been made.—Dickison v. Reynolds, 48 M. 159. Return of inability to find the personal property in possession of the person chargeable with payment of taxes is a condition precedent to a valid sale, and in the absence of such return the existence of such personal property may be shown to defeat such sale.—Tompkins v. Johnson, 75 M. 181. Return of taxes made before the expiration of time for making the return is no wrong to the tax-payer, whose right to make payment after the return is the same as before.—Drennan v. Bierlein, 49 M. 272; Shefferly v. Auditor

General, 120 M. 455. Premature return does not affect the jurisdiction or void the decree.—Conley v. McMillan, 119 M. 694. In Bailey v. Haywood, 70 M. 188, it was held that premature return by township treasurer renders sales therefor void; but this holding was under a law that provided for office charges after the lands were returned.

One who had purchased the equity of redemption of mortgaged lands after a tax had been assessed thereon had personal property on the land that the collector falsely returned nulla bona and the tax became a lien on the land from which the owner of the mortgage had to redeem after foreclosure. *Held*, that the latter had a right of action at common law against the collector for injury resulting to him in being compelled to redeem from the tax sale.—Raynesford v. Phelps, 43 M. 342. A tax sale for a void tax does no such injury to a mortgagee as will sustain an action against the tax collector for damages; and in such a suit the collector is not estopped by his return from showing that the tax was void.—Raynesford v. Phelps, 49 M. 315.

County treasurer is not authorized to pass upon irregularities in returns, but is required to accept returns from city when made as charter provides.—City of Jackson v. Jackson County Treasurer, 117 M. 305. But he should reject all erroneous descriptions as provided in this section. This he must do at the time of the comparison, and should not include the rejected descriptions in his transcript sent to the Auditor General.

In a suit to collect a personal tax, where the defendant claimed that the township treasurer had omitted to file the affidavit and statement, but there was testimony disputing the contention, the issue was one of fact for the jury.—Twp. of Deep River v. Van Antwerp, 174 M. 19.

VILLAGE TAXES: Renewal of warrant for collection of village taxes by order of council is valid though made after expiration of warrant.—Village taxes not invalidated by reason of president extending warrant to October 7, when council has authorized its renewal to a later date.—Lumber Co. v. Village of Oscoda, 97 M. 221. No formal notification to the officer to whom the warrant is directed is necessary to a valid extension of it.—Griswold v. Union School District, 24 M. 262.

Town treasurer must account for the full amount of the tax roll either in money or the return of unpaid taxes. A township must make good the amount of the default of its treasurer.—Oceana County v. Hart Township, 48 M. 319. Statement of collector under oath of all moneys received is required to secure an accurate accounting of all the moneys in the collector's hands, and has no reference to the return of lands for delinquent taxes.—Tweed v. Metcalf, 4 M. 579.

See Secs. 56, 112.

Discharge of township treasurer's bond.

Tax roll and copy to be filed with county treasurer.

Uncollected personal taxes.

County treasurer's warrant.

SEC. 56. (4052) The county treasurer shall thereupon indorse the fact of such settlement on the bond of the township or city treasurer, which indorsement shall operate as a discharge of the treasurer and his sureties from the obligation thereof, unless the return of such treasurer is incorrect, in which case such bond shall continue in force, and such treasurer and his sureties shall be liable thereon for all damages occasioned by such incorrect returns; and the township treasurer shall immediately deposit his tax roll with the county treasurer, who shall file and preserve the same in his office, and which said roll or a duly certified copy thereof shall, for all purposes, in all courts, suits and proceedings, be taken, held and used as evidence, in the same manner and with like effect as the original roll. The county treasurer shall give the township or city treasurer a statement of all the personal taxes which remain uncollected, taken from the return of the latter, with a warrant authorizing him or his successor to collect them according to law, and thereafter such treasurer or his successor shall have the same power to collect such taxes as under the original warrant.

History:—C. L. '97, 3879.

City and township treasurers required to pay to the county treasurer the full amount of the tax levy upon personal property whether it has been collected or not.—City of Muskegon v. County of Muskegon, 123 M. 272.

County treasurer can only issue supplemental warrant upon town treasurer filing the verified statement provided for (Sec. 55), which must strictly conform to the statutory requirements.—Township of Port Huron v. Potts, 78 M. 435. Where township treasurer fails to make return of unpaid personal taxes, county treasurer's warrant is void and no action can be maintained by township to collect although regularly assessed and payment promised.—Bangor v. Transportation Co., 106 M. 223. Warrant is absolutely void where no verified return has been made to the county treasurer as required by Sec. 55.—Northwestern Cooperage and Lumber Co. v. Scott, 123 M. 357.

If there is a balance due the State, as there may be from a failure to collect the full amount of the personal tax, the county must make it good, as was held in City of Muskegon v. County of Muskegon, 123 M. 272.—Auditor General v. Bolt, 124 M. 185.

Secs. 2742-45 C. L. 1915, providing for the collection of personal taxes by the treasurer of the village by suit or levy in the name of the village, confers the right of action on the village after the return of the warrant, where no suit or levy has been made by the treasurer during the life of the warrant.—Village of Chelsea v. Holmes et al., 137 M. 195.

Record and transcript of delinquent taxes.

Sec. 57. (4053) When any county treasurer shall receive from a township treasurer a statement of unpaid taxes, together with a list of the lands on which the same are delinquent, verified according to law, such county treasurer shall enter the same at length on the books in his office, provided for that purpose, and he shall make a transcript of all the descriptions of land returned as delinquent for unpaid taxes, except such as may have been rejected by him, with the several taxes assessed upon such descriptions respectively, which transcript shall be compared by the county clerk with the statement of the county treasurer, and if the county clerk finds it to be a true transcript thereof, he shall add to it a certificate that he has, upon careful examination, found it correct. Such transcript, so made, compared and certified, shall be forwarded by the county treasurer to the Auditor General, by the first day of May next after the return of such statement; but such transcript shall be receivable at any time during said month of May, and the Auditor General is hereby authorized, when in his judgment it may be deemed expedient, to extend the time in which said transcript shall be returned to him.

Certificate of county clerk upon transcript.

Return to Auditor General.

History:—Am. 1897, p. 283, Act 225, Imd. Eff. May 29; C. L. '97, 3880.

County clerk not required to certify to township treasurer's returns to county treasurer, but to the accuracy of the county treasurer's transcript to the Auditor General.—Hunt v. Chapin, 42 M. 24.

In an action to charge county treasurer on his bond with failure of duty in not forwarding to the Auditor General lists of delinquent tax lands it is incumbent to show that the transcripts were not forwarded within a reasonable time after actual return to the treasurer by the collectors.—Supervisors of Houghton v. Rees, 34 M. 481. Mandamus will not be granted to compel Auditor General to receive transcript which is not forwarded within the statutory period. Whether or not Auditor General might in his discretion accept returns forwarded later there is nothing in the statute making it his duty to do so or conferring on the county the right to demand credit upon its account with the State for the amount of such belated returns.—Houghton County v. Auditor General, 36 M. 271.

County treasurer's transcript to Auditor General should not include any lands or taxes rejected by him (Sec. 55), nor any personal taxes. It should be forwarded as soon as is practicable after returned to him. At the same time he should return a transcript of all lands returned for village (corporation) taxes. There is no advantage in returning the latter before the regular returns are made.

All lands and all taxes thereon returned to the county treasurer (except those rejected by him as provided in Sec 55), must be included in his transcript sent to the Auditor General, whether the taxes are paid before such transcript is forwarded or not.

County treasurer may receive taxes.

Sec. 58. (4054) After the return of lands for unpaid taxes the county treasurer is authorized to receive, under like provisions as in section fifty-three of this act, the amounts of the several taxes or any of them due, and the board of supervisors in each county may authorize notice to be given to all delinquent tax-payers so far as known. The county treasurer shall issue triplicate receipts for all such taxes received by him, which shall be countersigned by the county clerk, one of such triplicate receipts shall be delivered to the person

Duplicate receipts to be sent to Auditor General.

Treasurer not to receive payment if held as State tax lands.

paying the taxes, one filed in the office of the county treasurer, and one of such triplicates shall be left with said clerk, who shall make an entry of the number and amount for which every such receipt was given, with the name and postoffice address of the person paying such taxes in a book provided for that purpose, and shall on the first Monday of each month forward all such receipts to the Auditor General, in such manner as he may direct; all receipts issued under the provisions of this section shall be consecutively numbered, beginning with number one on the first of each calendar year: *Provided,* That if any description of land is held by the State subject to sale as State tax land, the county treasurer shall not be authorized to receive the amounts due for years subject to payment, where payment thereof is tendered in contemplation of an application to the Auditor General to purchase the land for taxes of prior years as State tax land under the provisions of section eighty-four of this act: *Provided further,* That when payment of the taxes on any parcel or description of land or on any undivided share thereof, is made to any county treasurer, said treasurer shall place or cause to be placed upon the face of the receipt or redemption certificate, the following certificate: "I hereby certify that application was made to pay all taxes due and payable at this office on the description .... shown in this receipt.
Signed .... Treas."

At the time the Auditor General forwards his petition to the register in chancery of each county, he shall also send to the county treasurer of each county in this State, a sufficient number of printed forms to enable said county treasurer to notify the owners of all lands included in said petition in accordance with the provisions of this section. The cost of mailing the notices herein provided for shall be paid to the county treasurer out of the general or contingent fund of each county on allowance by the board of supervisors or board of county auditors: *Provided,* That failure to receive or serve such notice shall not invalidate the proceedings taken under the Auditor General's petition and decree of the circuit court, in foreclosure and sale of the lands for taxes.

History:—C. L. '97, 3881; Am. 1905, p. 310, Act 213, Eff. Sept. 16:—Am. 1913, p. 111, Act 76, Eff. Aug. 14;—Am. 1917, p. 799, Act 320, Eff. Aug. 10.

County clerks should never countersign duplicate receipts in advance, but must countersign them as issued and retain one at that time. There will then be no reason why all the duplicates for the month may not be promptly forwarded to the Auditor General after the close of each month. They should see that the postoffice address of the person paying is entered on both the receipt and the duplicate.

Section does not authorize payment to county treasurer under protest and recovery by suit against county. Payment to county treasurer under protest to secure certificate under Sec. 135 is not payment under duress and gives no common law right for recovery of amount paid.—Weston v. County of Luce, 102 M. 528.

This section does not apply to taxes for years where sales are canceled.—Schulte v. Auditor General, 131 M. 676.

The principle of involuntary payment of taxes does not permit the recovery of a valid tax paid by the tax-payer, which he is in duty bound to pay, merely because of an irregularity in the method of collection.—Godkin v. Doyle Township, 143 M. 236.

Plaintiff owned fifty feet six inches frontage of lot 2 and was assessed and paid taxes by a mistake of fact on the west 50.49 feet of lot 2, which included a portion of the lot not owned by him. The land not owned by plaintiff was not assessed to the real owner. *Held:* That the plaintiff cannot aver a mistake of fact resulting from his own neglect to consult the record and recover the tax voluntarily paid.—Bateson v. City of Detroit, 143 M. 582.

There is no right to recover a void tax, voluntarily paid, from either county or city, except it be paid to the township or city treasurer under Sec. 53.—Gage v. City of Saginaw, 128 M. 682.

The rule that a tax voluntarily paid cannot be recovered back and that the tax-payer cannot aver a mistake of the fact which results from his own neglect to consult the record is too well settled to require extended citation of authorities. See also 2nd Cooley on Taxation (3rd Ed.) p. 1495 and Lumber Co. v. Springfield, 92 Mich. 277. The instruction was warranted.—Bateson v. City of Detroit, 143 M. 582.

Right to recover in an action at law for voluntary payment of invalid taxes made by mistake on the lands assessed to defendant, denied and case held ruled by Bateson v. Detroit, 143 M. 582.—Bateson v. Phelps, 145 M. 605.

See also notes under Secs. 46 and 53 voluntary and involuntary payments.

Partial payment.

Interest and collection fee.

Lien for expenses.

SEC. 59. (4055) Any person may pay the taxes or any one of the several taxes, on any parcel or description of land returned as aforesaid, or on any undivided share thereof, with interest computed thereon from the first day of March next after the same were assessed, at the rate of one per cent per month or fraction thereof, with four per cent as a collection fee, to the county treasurer of the county in which the lands are situated, at any time before they are sold: *Provided,* That on all descriptions of land on which any of the several taxes remain unpaid on the first day of October next preceding the time prescribed for the sale thereof, there shall be charged an additional one dollar for expenses and which shall thereafter be a lien on said land and when collected shall belong to the general fund of the State.

History:—C. L. '97, 3882;—Am. 1899, p. 423, Act 262, Eff. Sept. 23;—Am. 1921, p. 279, Act 129, Eff. Aug. 18.

When an application is made to pay the taxes on a parcel of land that is assessed with other lands in one description, the treasurer should divide the taxes on the entire description by the area of the land assessed; for instance, if four lots of equal size are assessed together, the payment of the taxes on one lot would be one-fourth of the total tax on the four lots; or should a twenty acre parcel and a forty acre parcel be assessed in one description, the payment of the taxes on the twenty acre parcel would be one-third of the total tax on the entire description. Should the treasurer divide the tax on any other basis he would become practically an assessor, which the law does not permit.—See letter of the Auditor General, April 15, 1923.

The charge for interest and expense provided for by Sec. 59 as amended by Act 262 of 1899 applies to all taxes unpaid and not merely to those assessed after the amendment.—Webster v. Auditor General, 121 M. 668.

As to penalty see Lacey v. Davis, 4 M. 140.

See Secs. 53, 117.

OF THE SALE, REDEMPTION AND CONVEYANCE OF DELINQUENT TAX LANDS.

Delinquent land subject to sale.

Right to enforce lien.

SEC. 60. (4056) All lands which have been or may hereafter be returned to the Auditor General as delinquent for taxes and upon which any taxes are now or shall hereafter remain unpaid, after their return to the Auditor General under the provisions of this act, or to the several county treasurers of the State under the provisions of Act number 200 of the Public Acts of 1891, for the period of one year or more, shall be subject to disposition, sale and redemption for the enforcement and collection of such tax liens, in the method and manner as hereinafter provided. In the disposition and sale of such delinquent tax lands the people of the State of Michigan shall be deemed to have a valid lien upon such lands, with all the rights to enforce the same as a preferred or first claim upon such lands, and the rights and choses to enforce such lien shall be held and construed by all the courts of this State as the *prima facie* rights of the State, and shall not be set aside or annulled except in the manner and for the causes herein specified.

History:—C. L. '97, 3883.

The act, though altering the time of sale and the period for redemption as to lands previously assessed, is not open to the objection that it violates the provision of the federal constitution (Sec. 10, Art. I) that no state shall enact any law impairing the obligation of contracts, since proceedings for the collection of taxes are essentially in invitum, and do not presuppose the existence of any contract relation; nor does the act conflict with the provision of the state constitution (Sec. 32, Art. VI) that no person shall be deprived of his property without due process of law.—Muirhead v. Sands, 111 M. 486.

Proceedings to collect taxes are usually proceedings in rem. The fact that the statute authorizes these proceedings to be taken in a court of equity does not make them any the less proceedings in rem. The property alone is described in the petition. Every one knows that his land is subject to taxation; every one is presumed to know the law. If he fails to pay he must be held to know that proceedings will be taken to enforce these taxes against his land and not against him personally. If not paid he knows that his property will be advertised and sold under a decree in chancery, without reference or further notice to the owner of the land or to the person against whom it is or may be assessed.—Dumphy v. Hilton, 121 M. 315.

Section not inconsistent with Sec. 125.—Muirhead v. Sands, 111 M. 487.

When a tax-payer paid a part of a tax which was thereafter returned to him by the collector on the tax-payer's inability to pay the balance before the expiration of the time when the tax must either have been paid or the land returned for delinquent taxes, such payment did not affect the State's lien on the land for the entire tax, nor invalidate a sale of the land for the same.—Sayers v. O'Connor, 124 M. 256.

See Sec. 138.

OF THE NOTICE AND LISTS OF LANDS TO BE SOLD.

Petition for decree of sale.

SEC. 61. (4057) In sufficient time before the time fixed herein for the annual tax sale, the Auditor General shall prepare and file in the office of the county clerk in each county in which lands are to be sold under the provisions of this act, a petition addressed to the circuit court for said county in chancery, stating therein by apt reference to lists or schedules annexed thereto a description of all lands in such county upon which taxes have remained unpaid for more than one year after they were returned as delinquent, and the total amount of such taxes, with interest computed thereon to the first day of May following the filing of said petition, and a collection fee of four per cent extended separately against each parcel of land, and he shall include with and add to such total amount against each parcel, one dollar for expenses. Such petition shall pray a decree in favor of the State of Michigan against said land for the payment of the several amounts so specified therein, and in default thereof that such lands be sold. It shall be signed by the Auditor General and need not be otherwise verified, and shall be deemed equivalent to a bill in chancery to enforce the lien for such taxes, interest and charges, averring their validity, that they have not been paid, and praying for a sale to pay such lien. Lands heretofore or hereafter bid off in the name of the State and thus held, and on which taxes have been assessed, subsequent to the tax for which such lands were sold and purchased by the State, shall be included in such petition for all such subsequent taxes which have remained unpaid for more than one year after

Showing required.

Interest and charges.

Verification.

Unsold delinquent lands to be included.

they were returned as delinquent. The petition shall be in a substantial record book, with the lists of lands and taxes annexed following the same therein. Such record shall be ruled with appropriate columns, one containing a description of the lands with columns for the total amount of taxes, interest and charges claimed due on each parcel of land opposite thereto; also with blank columns, one with heading: "Parts of descriptions paid before sale or withheld;" another, "By whom paid;" another, "Amount paid before sale;" another, "Amount decreed against lands;" another, "Special orders;" another, "Interest in each parcel sold;" another, "Name of purchaser;" another, "Address of purchaser;" another, "Number of certificate;" another, "Remarks." The Auditor General may add such other columns as he may find necessary. The word "petition" shall be construed to include the lists annexed thereto. Said record shall be called "Tax Record." Parts of descriptions of land upon which taxes are paid before sale, or which are withheld from sale, the amount paid on taxes before sale, the amount of taxes, interest and charges decreed against lands, special orders made by the court relating to any parcel of land or any tax, the interest in each parcel of land sold, the name of each purchaser and his address, and the number of certificate of sale shall be entered in said record under their appropriate headings, opposite to the description of lands affected thereby.

Form of petition.

Tax record.

History:—Am. 1897, p. 284, Act 225, Imd. Eff. May 29;—C. L. '97, 3884;—Am. 1899, p. 423, Act 262, Eff. Sept. 23.

Copy of petition found in county clerk's files cannot be considered as the original petition when the proper petition is in county treasurer's office.—Barnum v. Barnes, 118 M. 264. Where the petition is produced from the county treasurer's office and other papers including the order of publication which order recites the fact of the filing of the petition are produced from the clerk's office it will be presumed that the petition was filed with the clerk and that the failure to mark it as filed was a clerical omission.—Mann v. Carson, 120 M. 631.

A decree for the sale of lands for delinquent taxes including a charge of seventy cents for "advertising and other expenses," is valid; the limitation in section 65 of 40 cents for each description applies only to the amount to be paid for printing the advertisement.—Sayers v. O'Connor, 124 M. 256.

The Auditor General in a petition for the sale of lands for delinquent taxes had no right (before amendment of 1899) to include in the petition lands previously sold and held by the State as State tax lands. Following Conn. Mutual Life Ins. Co. v. Wood, 115 M. 444.—Aztec Copper Co. v. Auditor General, 125 M. 615.

Lands delinquent for drain taxes may be bid off by the State in accordance with the provisions of the tax law.—Rumsey v. Griffin et al., 138 M. 413.

The published notice of hearing of sales for unpaid taxes whereby the land in a city is listed under one head and the land in the same township as the city is listed under the head of the township, is not defective.—Smith et al. v. Auditor General et al., 138 M. 582.

Sale held not subject to cancellation for insufficiency of interest where subsequent year had been sold under valid proceedings.—Horton v. Helmholtz, 149 M. 227.

When county treasurer to notify delinquent taxpayer.

SEC. 61 (a). (4058) As soon as the Auditor General's petition, with a list of delinquent tax lands is filed with the register in chancery under the provisions of section sixty-one of this act and not less than thirty days before the date fixed for the annual tax sale, the county treasurer of each county in this State shall notify the owner or owners of each piece or parcel of land upon which taxes are then delinquent, and which are subject to sale at the next ensuing annual tax sale by mailing to the last known address of such owner or owners, a notice in substantially the form prescribed below. Said notice shall be sent to such owner or owners, directed to their last known postoffice address by registered mail with return receipt demanded, with postage fully prepaid thereon:

Form of notice.

Office of the County Treasurer of ...... County Michigan.

Sir:

You are hereby notified that the annual tax sale of lands for delinquent taxes of nineteen hundred .... and prior years for the county of .... will be made at the county treasurer's office of said county at the county seat of said county, on the .... day of May, nineteen hundred .... you appear to be the owner of the following descriptions of land upon which taxes appear to be unpaid as below stated.

Description of land:

....

Amount of delinquent taxes unpaid for the year nineteen hundred .... $.............. If the taxes on the above mentioned lands are not paid by you prior to the date upon which said sale is to be held, then said lands will be sold for the taxes above stated.

Very truly yours,

....

County Treasurer.

Printed forms, who to furnish.

At the time the Auditor General forwards his petition to the register in chancery of each county, he shall also send to the county treasurer of each county in this State, a sufficient number of printed forms to enable said county treasurer to notify the owners of all lands included in said petition in accordance with the provisions of this section. The cost of mailing the notices herein provided for shall be paid to the county treasurer out of the general or contingent fund of each county on allowance by the board of supervisors or board of county auditors: *Provided,* That failure to receive or serve such notice shall not invalidate the proceedings taken under the Auditor General's petition and decree of the circuit court, in foreclosure and sale of the lands for taxes.

Proviso.

History:—Added 1905, p. 339, Act 234, Eff. Sept. 16;—Am. 1913, p. 76, Act 52, Eff. Aug. 14.

Duty of circuit judge and county clerk.

SEC. 62. (4059) It shall be the duty of the county clerk, on the filing of said petition, to at once present the same to the circuit judge of the county in which said delinquent tax lands are situated, and it shall be the duty of said circuit judge to make an order in the form herein prescribed, which order, when so made and signed by the circuit judge, shall be countersigned by the county clerk as register in chancery, and recorded by him in the proper books of his office, and thereupon it shall be the duty of said county clerk to immediately make a true copy of said order, and transmit the same to the Auditor General. Said order shall be substantially in the following form:

STATE OF MICHIGAN, }
County of................ } ss.

Form of order of hearing.

The circuit court for the county of...................... in chancery.

In the matter of the petition of...................... Auditor General of the State of Michigan, for and in behalf of said State, for the sale of certain lands for taxes assessed thereon: On reading and filing the petition of the Auditor General of the State of Michigan, praying for a decree in favor of the State of Michigan, against each parcel of land therein described, for the amounts therein specified, claimed to be due for taxes, interest and charges on each such parcel of land, and that such lands be sold for the amounts so claimed by the State of Michigan. It is ordered that said petition will be brought on for hearing and decree at the .... term of this court, to be held at.............., in the county of ...., State of Michigan, on the ....day of .... A. D. 18.... at the opening of the court on that day, and that all persons interested in such lands or any part thereof, desiring to contest the lien claimed thereon by the State of Michigan, for such taxes, interest and charges, or any part thereof, shall appear in said court, and file with the clerk thereof, acting as register in chancery, their objections thereto, on or before the first day of the term of this court above mentioned, and that in default thereof the same will be taken as confessed and a decree will be taken and entered as prayed for in said petition. And it is further ordered that in pursuance of said decree the lands described in said petition for which a decree of sale shall be made, will be sold for the several taxes, interest and charges thereon as determined by such decree, on the first Tuesday in May thereafter, beginning at ten o'clock a. m., on said day, or on the day or days subsequent thereto, as may be necessary to complete the sale of said lands and of each and every parcel thereof, at the office of the county treasurer, or at such convenient place as shall be selected by him at the county seat of the county of .... State of Michigan; and that the sale then and there made will be a public sale, and each parcel described in the decree shall be separately exposed for sale for the total taxes, interest and charges, and the sale shall be made to the person paying the full amount charged against such parcel, and accepting a conveyance of the smallest undivided fee simple interest therein; or, if no person will pay the taxes and charges and take a conveyance of less than the entire thereof, then the whole parcel shall be offered and sold. If any parcel of land cannot be sold for taxes, interest and charges, such parcel shall be passed over for the time being, and shall, on the succeeding day, or before the close of the sale, be reoffered, and if, on such second offer, or during such sale, the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same in the name of the State.

Witness the Hon............................, circuit judge, and the seal of said (circuit) court of .... county, this .... day of................ A. D. 18....

......................,
Circuit Judge.

Countersigned,

......................,
Register.

History:—Am. 1895, p. 294, Act 154, Eff. Aug. 30;— Am. 1897, p. 285, Act 225, Imd. Eff. May 29; C. L. '97, 3885;—Am. 1899, p. 424, Act 262, Eff. Sept. 23.

The order of hearing is not required to be taken in open court and there is no reason why county clerks should wait for the court to convene before presenting the petition. The judges should be advised of the facts "at once" upon the filing of the petition. The filing of the petition and every order made should be promptly recorded in the chancery records. A certified copy of the order of hearing should be promptly forwarded to the Auditor General.

Court may make a valid order to take the place of a void one, providing the valid order is made in time and follows the requirements of the statute.—Haven v. Owen, 121 M. 51.

County clerk's sureties liable for his failure to enter and record all orders, etc., and to faithfully perform the duties imposed upon him by law.—2432 C. L. '15.

Hearing must be at a term of court subsequent to that in which petition is filed, and when fixed for the same term no jurisdiction is acquired to enter decree.—Ledyard v. Auditor General, 121 M. 56; also Tromble v. Hoffman, 130 M. 67. But may be at a special term held subsequent to filing of petition.—See Roberts v. Loxley, 121 M. 63.

Statutory notice as to place of sale sufficient.—Clark v. Moyer, 5 M. 462; Wisner v. Davenport, 5 M. 501. Statutory form of order of hearing sufficient.—Waldron v. Auditor General, 109 M. 231. If at the time of filing the petition the county treasurer has any proper reason for selecting a place of sale at the county seat other than his office the judge should be so advised, and in such case the name of the place selected may be substituted in order of hearing for the words "at the office of the county treasurer," but if this is done the words "or at such convenient place, etc.," should not be stricken out.

Section 62 of the tax law requires an order of hearing in petitions for the sale of taxes to be entitled substantially in the form: "In the matter of the petition of the State of Michigan for the sale of certain lands for taxes assessed thereon." *Held:* That a petition, entitled "In the matter of the petition of Stanley W. Turner, Auditor General of the State of Michigan, for and in behalf of said State for the sale of certain lands for taxes assessed thereon" is a substantial compliance with the statute.—Goodell v. Auditor General, 143 M. 246.

Auditor General to designate newspapers.

SEC. 63. (4060) The newspapers in which such order and petition are to be published shall be designated by the Auditor General on or before the first day of September in each and every year, and not afterwards, unless the publisher of the paper so designated shall fail to accept such designation within fifteen days after the same is made, or shall refuse or neglect to publish and print such order and petition, or unless, from any other cause, such publication shall become impracticable; in which case the Auditor General shall designate some other paper for that purpose before the time limited for commencing such publication: *Provided,* That in counties where one or more newspapers have been printed and published more than one year prior to such designation [of] one of such papers shall be designated for the publication herein required.

Proviso.

History:—Am. 1897, p. 286, Act 225, Imd. Eff. May 29;—C. L. '97, 3886.

The requirement of the recording of the court's order is not jurisdictional so as to invalidate the tax sale proceedings on account of a failure to record it at length.—Burns v. Ford, 124 M. 274.

No provision for any record of designation.—Waldron v. Auditor General, 109 M. 231. The fact that neither the notice nor the affidavit of publication show affirmatively that Auditor General designated paper cannot be urged as objection to jurisdiction. Statute requires neither. When petition is signed by Auditor General it will be presumed that he authorized publication where it appears.—Watts v. Bublitz, 99 M. 586.

The regularity of tax proceedings is not affected by the fact that the order of the Auditor General, designating the newspaper in which the proceedings should be published, is made prior to the time that the petition is filed.—Wilkin v. Keith, 121 M. 66.

As to power of revocation of designation see Featherly v. Auditor General, Mich. Mandamus Cases, 1027; Brown v. Auditor General, Mich. Mandamus Cases, 1028.

The published notice of hearing of sales for unpaid taxes whereby the land in a city is listed under one head and the land in the same township as the city is listed under the head of the township, is not defective.—Smith et al. v. Auditor General et al., 138 M. 582.

Publication in supplement held to be a compliance with the law.—Wilkins v. Keith, 121 M. 166; Mann v. Carson, 120 M. 631.

Publication in certain events.

Sec. 64. (4061) In case there is no paper published in such county, or if from any cause no paper can be secured in any county to publish such order and petition, the Auditor General shall cause such order and petition containing the list of lands delinquent for taxes to be printed in proper form for general distribution, and shall furnish the county treasurer with such number of the same as may be necessary to furnish each voter at the last general election in said county with one copy, and such county treasurer shall distribute the order and petition in such manner that copies thereof may become public in every township in said county, and shall post or cause to be posted three copies in three public places in each township, and shall file affidavit of the posting and distribution of the same in the usual form in the office of said county treasurer and of the Auditor General.

County treasurer to distribute.

Proof of distribution.

History:—C. L. '97, 3887.

Public places—what deemed.—People v. LaGrange, 2 M. 187. Affidavit should show where posted.—People v. Commissioners of Nankin, 14 M. 528.

Cost of advertising.

Sec. 65. (4062) The cost of such advertising shall in no case exceed the sum of forty cents for each description of lands so advertised and sold: *Provided*, That in case there are less than four hundred descriptions so advertised in any county, there shall be paid the further sum of one dollar and twenty cents per folio for the first insertion and sixty cents per folio for each subsequent insertion of the Auditor General's petition and order of hearing, but such sum shall not exceed the amount to be paid for advertising four hundred descriptions at the rate of forty cents each, and shall be paid by the State Treasurer upon warrant of the Auditor General out of the general fund of the State.

History:—C. L. '97, 3888;—Am. 1913, p. 105, Act 72, Eff. Aug. 14;—Am. 1921, p. 86, Act 56, Eff. Aug. 18.

Decree not invalid because Section 65 provided 40 cents for advertising and seventy cents is included in decree. This section provides for pay for publication and does not include costs and charges. Section 61 relates to charge that may be included in petition.—Sayres v. O'Connor, 124 M. 256.

Publication of order and petition.

Sec. 66. (4063) The Auditor General shall cause a copy of said order and a copy of said petition to be published at least once in each week for four successive weeks next prior to the time fixed for the hearing thereof, in some newspaper published and circulating in the county where such petition is filed, to be selected by the Auditor General. Said order and petition shall both be published in the same newspaper, the order immediately preceding the petition: *Provided,* In such petition it shall be sufficient to print against each parcel the "amount of taxes," "interest," "charges," "total," due on each.

The cost of such publication shall be paid by the State on the warrant of the Auditor General.

Copies of publication.

The proprietor of such paper shall furnish the proper county treasurer and Auditor General each with two copies of each issue containing such publication, and it shall be the duty of such Auditor General and treasurer to carefully examine the notices published and see that they are correct. Any person familiar with the facts may make an affidavit as to the publication required. The Auditor General shall not pay for any such publication until satisfied that it has been made according to law.

Publication equivalent to personal notice.

The publication of the order and petition aforesaid shall be equivalent to a personal service of notice on all persons who are interested in the lands specified in such petition, of the filing thereof, of all proceedings thereon and on the sale of the lands under the decree, and shall give the court jurisdiction to hear such petition, determine all questions arising thereon, and to decree a sale of such lands for the payment of all taxes, interest and charges thereon.

Jurisdiction of circuit court.

The circuit court in chancery shall have jurisdiction to hear, try and determine the matters alleged in such petition, even though the amount involved therein be less than one hundred dollars.

Prosecuting attorney to prosecute.

It shall be the duty of the prosecuting attorney to prosecute all such proceedings on the part of the State. If he shall refuse, neglect or be unable to do so, the court shall appoint some competent person to take charge of and prosecute the same, who shall be paid by the county. The board of supervisors may employ some competent person to prosecute such proceedings or assist therein.

Filing of proof of publication.

Proof of the publication of the order and petition herein required shall be filed in the office of the county clerk before any final order is made.

Contested taxes.

Any person having any interest in the lands or any portion thereof included or referred to in said petition desiring to contest the validity of any tax shall file in writing his objections thereto with the clerk of the county in which said lands are advertised for sale

Notice of contest to be served on prosecuting attorney.

and serve a copy thereof on the prosecuting attorney of the county, on or before the day fixed in said notice for the hearing of such petition, and shall not be allowed to make any objections not therein specified.

Granting further time.

If on the day fixed in such notice for the hearing of such petition or on the day following that day, it shall be made to appear to the court that any person has been prevented from filing his objections to any tax without any fault on his part, such further time may be granted for that purpose as may seem proper, not exceeding five days.

Hearing to have precedence.

The court shall give precedence to the hearing of such petition over all other business, shall examine, consider and determine the matters therein stated and objections made, in a summary manner without other pleadings, and make final decree thereon as the right of the case may be. The taxes specified in the petition shall be presumed to be legal and a decree be made therefor unless the contrary is proved.

Evidence.

Evidence shall be taken in open court. All oral testimony shall, at the request of any person interested, be written down and filed. **Court orders and decisions.** The court may make such orders from time to time as may be necessary to facilitate the proceedings, and shall decide all questions as to the admissibility of evidence, and the decisions so made shall be final and not subject to review or appeal. **Separation and rejection of taxes.** If the lands of two or more persons have been assessed together, the court may, if practicable, separate the same and apportion to each parcel its just proportion of the taxes, interest and charges. If any tax shall be found illegal, such part shall be set aside and the remaining tax shall be decreed valid. **Register to enter amounts decreed.** The total amount of taxes, interest and charges, as fixed by the court, shall be entered by the register of the court opposite each parcel of land in the column of said record under the heading "Amount decreed against lands." **Entry and signing of special orders in tax record.** If the court shall make any order setting aside the taxes on any parcel of land, or any part thereof, or any special order relating to any particular parcel of land, or taxes thereon, a brief entry of such order shall be made upon said record opposite such land or tax, which shall be signed by the judge of the court, either by his full name or initials, and such entry shall have the same effect as if made and entered as a part of a final decree. **Final decree.** At least ten days prior to the time fixed for the sale of such lands, the court shall make a final decree in favor of the State of Michigan for such taxes, interest and charges as shall be valid, and determine the total amount thereof chargeable against each parcel of land, and shall order and decree that such several parcels of land, or so much of each as may be necessary to satisfy the amount fixed by such decree, shall severally be sold as the law directs. **Decree in severalty.** Such decree shall be considered as a several decree in favor of the State of Michigan against each parcel of land for each tax included therein. **Costs may be decreed.** The court may decree such costs against a person contesting any tax as may be equitable, if the tax, or any part thereof which remains unpaid be adjudged valid.

History:—Am. 1895, p. 310, Act 162, Eff. Aug. 30;— C. L. '97, 3889;—Am. 1899, p. 45, Act 31, Imd. Eff. April 6;—Am. 1899, p. 435, Act 264, Eff. Sept. 23.

PUBLICATION: All writs, processes, proceedings and records in any court within the State shall be in the English language.—12260n C. L. '15; Sec. 6, Art. XVIII, Constitution. Whenever the law provides for a publication in a newspaper it means one published in the English language.—Auditor General v. Hutchinson, 113 M. 245. Publication of order and petition must be in newspaper published in the English language.—Visscher v. Ottawa Circuit Judge, 116 M. 666. In Schaale v. Wasey, 70 M. 414, held that publication of notice of guardian sale published in English language, but in a German paper was not a proper publication under our laws.

"Four successive weeks" requires that full interval between the first notice and the sale.—Bacon v. Kennedy, 56 M. 329; Gantz v. Toles, 40 M. 725. Publication must be in successive issues without omission.—Mills v. City of Detroit, 95 M. 422. A statutory foreclosure is not invalidated by certain changes in the paper in which the advertisement is published.—Perkins v. Keller, 43 M. 53. Dollar mark on advertised list not requisite to validity of decree.—Muirhead v. Sands, 111 M. 487. But must be printed therein to comply with Auditor General's instructions in order to entitle publisher to payment. Auditor General having designated "Muskegon Chronicle" (there being Muskegon Daily Chronicle and Muskegon Weekly Chronicle) and publication being made in Muskegon Weekly Chronicle and treated by Auditor General as a compliance with his designation. *Held*, that it was a sufficient and legal publication.—Waldron v. Auditor General, 109 M. 231. Publication in supplement sufficient.—Mann v. Carson, 120 M. 631; Wilkin v. Keith, 121 M. 66.

This section does not require the publication of petition to be made for four weeks and ten days prior to hearing.—Eldridge v. Richmond et al., 120 M. 586; Hooker v. Bond, 118 M. 255; Barnum v. Barnum, 118 M. 264.

PROOF OF PUBLICATION: Affidavit prima facie evidence.—12526n C. L. '15. Proof should not be sworn to before prosecuting attorney or any other attorney who is engaged in the proceedings. See 12082n C. L. '15. Copy of advertisement must be identical with the one published.—Wilkinson v. Conaty, 65 M. 614. Proof of publication authorized by statute is not exclusive of any other.—Schlee v. Darrow Estate, 65 M. 362. Original proof of publication being erroneous, second affidavit and testimony of publisher held admissible but not conclusive.—Wyman v. Baer, 46 M. 418. Proof of publication held to be sufficient where prior to the entry of decree a second affidavit was filed to correct supposed defects in the first and both affidavits taken together conformed to the requirements of the statute.—Nester v. Church, 121 M. 81.

Files competent evidence of publication.—Cotton v. Rupert, 60 M. 318. But can only be corroborative where statute provides what proof shall be filed.

Affidavit need not recite that affiant is familiar with the facts.—Muirhead v. Sands, 111 M. 487. Proof of publication properly sworn to though not signed by affiant held valid. Failure to recite that newspaper is published in county not fatal; it can be supplied by reference to Auditor General's certificate of designation.—Wynkoop v. Grand Traverse Circuit Judge, 113 M. 381. Where there was no record showing filing of proof of publication and no proof found in clerk's office, publisher testified that statutory publication was made and proof thereof filed; held that this did not show that any sufficient proof was filed and that the provisions of Sec. 99, "no tax or sale * shall be held invalid by showing that any * affidavit, paper * cannot be found in the proper office" does not apply to proof of publication.—Benedict v. Auditor General, 104 M. 269. When proof of publication has been duly filed with the register the fact that he attached it to the Tax Record does not render the proceedings void.—Brooks v. Auditor General, 119 M. 329. Affidavit reciting publication once in each week commencing September 23d and terminating October 21st held sufficient.—Garner v. Wallace, 118 M. 387.

Affidavit showing publication for "four successive weeks first, etc.," held insufficient, it not showing publication for four consecutive weeks next prior to hearing.—McFadden v. Brady, 120 M. 699. Defect in affidavit of publication cannot be supplied by parol testimony.—Ibid. Where proof conforms to statute, it will not be held invalid because it calls the copies of the order and petition a notice when the papers attached clearly show compliance with the statute. —Spaulding v. O'Connor, 119 M. 45. But where no paper is found attached to the affidavit, but in the files with the affidavit are found a printed copy of the petition, a list of the delinquent land and a copy of the order of hearing printed on what purported to be a supplement to the newspaper making the affidavit, it will be presumed that the papers were originally attached and held that there was proper proof of publication.—Mann v. Carson, 120 M. 631.

In Auditor General v. Circuit Judge, Mich. Mandamus Cases 634, objection was made that the paper in which publication had been made was not a newspaper published in the county, within the statute. It appeared that the newspaper was published as the "Roscommon Democrat;" that its office was in that county, and that the papers printed elsewhere, came to the office in bulk and were addressed and distributed through the postoffice of that place. Mandamus was granted to compel respondent to hear and determine the amount due for taxes on certain lands and enter decree therefor.

The full order and petition as published, including list of lands and taxes, must be securely affixed to the affidavit of publication before the affidavit is signed and sworn to. No other part of the paper in which publication is made should be affixed to the affidavit. Care should be taken to file the affidavit and the advertisement affixed thereto in such form that they may be folded and placed in the files without the possibility of their being detached or mutilated when taken therefrom. In Featherly v. Hoffman, 117 M. 42, the files showing an incomplete advertisement affixed to affidavit of publication (the list of lands and taxes was missing), the court vacated the decree and set aside sale made thereunder. So also in Vliet v. Hoffman, 117 M. 255.

Further as to proof of publication see Woods v. Monroe, 17 M. 238; Perrine v. Fetters, 35 M. 233; Gillett v. Needham, 37 M. 143; Dexter v. Cranston, 41 M. 448; Snyder v. Hemmingway, 47 M. 549; National Bank v. Fonda, 65 M. 533; Feustmann v. Estate of Gott, 65 M. 592; Hortman v. Monroe, 98 M. 195; Dodsley v. Probate Judge, Mich. Mandamus Cases 664.

Where the proof of publication and notice of sale of land for taxes were lost, but the proof of publication was duly filed, their loss cannot in a collateral proceeding be held to have defeated the jurisdiction.—Hoffman v. Pack, 123 M. 74.

Where an affidavit of publication of notice of a tax sale was duly filed with the register of court, and that fact was noted in his calendar, the fact that he put the affidavit into the tax record did not affect the legality of the notice. Brooks v. Dix, 119 M. 329.

JURISDICTION: The first requisite to adjudication of validity of taxes before sale is jurisdiction.—Taylor v. Deveaux, 100 M. 581. Publication of order and petition (properly proven) gives court jurisdiction to enter decree for sale.—In re Petition of Wiley, 80 M. 58. Failure to enter an order pro confesso before decree, is a mere irregularity.—Jenkinson v. Auditor General, 104 M. 34; and does not make sale void.—Hooker v. Bond, 118 M. 255. The act does not require personal service of order of hearing.—Muirhead v. Sands, 111 M. 487. This section not unconstitutional because of failure to provide for personal service.—Ball v. Ridge Copper Co., 118 M. 7; Youngs v. Peters, 118 M. 45.

Failure to effect the last publication of the petition of the Auditor General for the sale of lands for taxes, and the order of the circuit judge setting the same for hearing ten days before the date of hearing, is not a jurisdictional defect invalidating tax sale proceedings.—Burns v. Ford, et al., 124 M. 274.

The statute makes the publication the equivalent of personal service and it is therefore the duty of the owner to watch the proceedings, and interpose any objection he may have.—Muirhead v. Sands, 111 M. 495; Young v. Peters, 118 M. 45; Cole v. Shelp, 98 M. 58; In re Wiley, 89 M. 58; Ball v. Ridge Copper Co., 118 M. 7.

If the proceedings to foreclose the tax liens show upon their face want of jurisdiction the deeds issued thereunder are void; but the jurisdiction cannot be attacked by evidence *de hors* the record.—Watts v. Bublitz, 99 M. 586.

In an action of ejectment involving the validity of a deed issued by the Auditor General on a sale of land for the taxes of 1887, the tax roll and return of the township treasurer are not admissible for the purpose of showing the invalidity of the tax.—Watts v. Bublitz, 99 M. 586.

The fact that an illegal item is included in the taxes for which land is sold does not deprive the court of jurisdiction to enter decree for sale of the land.—Blanchard v. Young, 152 M. 619.

NOTICE: A tax sale will not be set aside in equity because the owner, a non-resident, had no actual notice of the proceedings and supposed that the tax had been paid by one to whom he had sold the land by contract requiring the vendee to pay the taxes.—Hall v. Mann, 118 M. 201.

PROSECUTION. Prosecuting attorney shall prosecute or defend in all suits, applications and motions in which the State or county may be a party, or interested.—2405 C. L. '15. In Latimer v. Circuit Judge, Mich. Mandamus Cases 555, mandamus to strike from the files a petition filed by the Auditor General for a re-hearing, for the reason that the Auditor General and the counsel employed by the City of Muskegon appeared for petitioner upon such application to the exclusion of the prosecuting attorney was denied. State not liable for costs in case of decision in favor of tax-payer contesting the sale.—Auditor General v. Baker, 84 M. 113.

Whether objections go to the validity of the law or of the proceedings taken under it, they must be made and filed in writing on or before the day fixed for the hearing, and no objections not so stated and filed, can be allowed. The statute does not contemplate any mere dilatory pleading. The objection that the petition does not state the fact that a sale of the lands described therein has not been made is without force. The form of petition is sufficient if it contains the facts necessary to be stated as prescribed by the statute. The law is not unconstitutional for the reason that it provides for advertising a sale of lands for unpaid taxes before obtaining decree therefor, or that it cuts off the common law right of trial by jury or that it makes the decision of the circuit judge as to the exclusion or admission of evidence final.—See Auditor General v. Sloman, 84 M. 118; State Tax Law Cases, 54 M. 350.

Not ground for setting aside decree of sale that there was not sufficient time between final publication and time fixed for hearing for non-resident land owner to reach a place of trial from his place of residence.—Waldron v. Auditor General, 109 M. 231. Decree void as to those who did not appear or waive the right for further time where the court entered decree on the day following the day fixed for appearance and adjourned the term, it being held that this was in violation of the provisions of this section.—Peninsular Savings Bank v. Ward, 118 M. 87. Also, Gregory v. Calumet & Hecla, 121 M. 88.

Full statutory time for objections must be given. See notes to Sec. 139. All cases relative to the five days required by the section before amendment are equally applicable to the two days under the amended section. See Wait v. McMillan, 125 M. 95; Youngs v. Clark, 120 M. 528; Miller v. Brown, 122 M. 147; Sayer v. Auditor General, 124 M. 259; John Widdicomb Co. v. Card, 218 M. 72.

Costs, in the form of a solicitor's fee, were erroneously taxed against the owner of the land in proceedings for statutory decree for sale of lands.—Auditor General v. Nelson, 189 M. 93.

A decree entered on the Auditor General's petition for the sale of delinquent taxes before the expiration of five days in term, is not a fatal irregularity and does not avoid the decree provided the court remains in session sufficiently long to afford the statutory opportunity for objections to be heard.—Goodell v. Auditor General, 143 M. 246.

Wolverine Land Co. v. Davis, 141 M. 187. *Held*, that a decree is not premature if it is shown that court was in session five days from date of hearing, even though decree may have been actually entered.

Objections must set forth descriptions, and if only part of the taxes are claimed to be illegal, such information should be furnished the court as to enable it to separate the legal from the illegal. See Conway v. Township Board, 15 M. 257.

One desiring to contest the validity of the taxes assessed against his property, shall file in writing his objections thereto and shall not be allowed to make any objection not therein specified.—Auditor General v. Ayer, 211 M. 244.

In Richmond v. Circuit Judge, Mich. Mandamus Cases 557, mandamus to vacate order striking relator's objections from the files because copy was not served upon the prosecuting attorney ten days prior to the commencement of the term was denied. This and the following were before amendment providing that objections may be served on prosecuting attorney on or before day of hearing.

In Walsh v. Circuit Judge, Mich. Mandamus Cases 554, an order to show cause why an order of the circuit judge overruling prosecuting attorney's objections to the consideration of the defendant's answer on the ground that no copy of answer had been served on relator ten days prior to the first day of term should not be set aside, and also to set aside an order dismissing the proceedings because the order of hearing published lacked the seal of the court and because there were no dollar marks at the head of the columns of the published lists, was denied, it appearing that the circuit judge held the objections made to the procedings good "for the purpose of having the determination by the supreme court." The court held that the circuit judge should have passed upon each of the points raised upon its merits; that the questions were more properly reviewable on appeal, and that the supreme court does not feel called upon to review questions arising during the course of a proceeding, at least until the final judgment of the court below has been given after full consideration.

Where the time fixed for hearing was Nov. 11th a decree entered Nov. 16th was not premature.—Brown v. Napper, 125 M. 117.

In Allen v. Cowley, 128 M. 530, the record shows that the 15th day of October, 1895, was fixed by the court for hearing the Auditor General's petition for the taxes of 1893; that on that day the court, by an order, adjourned all proceedings until the 29th day of October, following; that court was in session October 29, 30 and 31, on which day the matters were heard; that court continued in session Nov. 1 and 2, when it adjourned sine die. On the 15th of November the decree was signed as of the 31st of October. *Held*, that there was ample time to file objections under the ruling in Miller v. Brown, 122 M. 147. See also McGinley v. Calumet & Hecla, 121 M. 88; Walt v. McMillan, 121 M. 95; Youngs v. Clark, 120 M. 528.

A decree of sale (before amendment of 1899) rendered within five days after the day fixed by the hearing is void as to persons who did not appear, or otherwise waive the right to appeal for further hearing. Following Peninsular Savings Bank v. Ward, 118 M. 87, and McGinley v. Mining Co., 121 M. 88.—Aztec Copper Co. v. Auditor General, 128 M. 615.

In Johnson v. Circuit Judge, Mich. Mandamus Cases 702, order to show cause why mandamus should not issue to vacate order holding that in the answer to a petition there are no specific allegations sufficient to raise an issue was denied. In Auditor General v. Circuit Judge, Mich. Mandamus Cases, 718, mandamus to compel respondent to vacate an order setting aside assessment against certain lands for certain taxes was denied, it appearing that the order was made upon its being shown that there was no proper record of equalization and because of other invalidity in the assessment.

HEARING: A mere mistake of judgment of the assessing officer is not reviewable.—Peninsula Iron Co. v. Crystal Falls, 60 M. 79. Title of de facto officer cannot be tried in hearing of petition for decree.—Auditor General v. Longyear, 110 M. 223. In hearing on petition for decree the allowance of an amendment to objections filed specifying objections more in detail is within the discretion of the court and will not be reviewed.—Auditor General v. Chandler, 108 M. 569. Petition is filed against the lands and no personal decree can be entered against the tax-payer (except for costs against the person contesting; see last part of this section). Answer of fraud to petition filed must specify the acts claimed to be fraudulent and whether of supervisor or board of review. Excessive assessment is not sufficient evidence of fraudulent or corrupt conduct on the part of the assessor or board of review.—Auditor General v. Stiles, 83 M. 460. The absolute illegality of a tax may be shown in proceedings to enforce it and it cannot be cured by proof that if the valuation had been correct the tax would have been legal.—Blanchard v. Powers, 42 M. 619.

Where a tax-payer fails to appear before board of review he is bound by the assessment as made and cannot in the absence of fraud be heard to complain.—Smith v. Carlow, 114 M. 67. One who allows work of extending drain to go on with full knowledge that he is to be assessed therefor and that it must be paid for by an assessment for benefits, is estopped from restraining the collection of the tax.—Atwell v. Barnes, 109 M. 10. Owner who, having full knowledge personally and through his agent that a street improvement is to be made and that his lands are to be assessed therefor, allows the improvement to be completed and the contractor to be paid out of the proceeds of the bonds issued by the city in anticipation of the collection of the assessment without making any objection thereto, cannot thereafter maintain a bill to restrain the collection of the assessment on the ground of irregularities therein.—Fitzhugh v. City of Bay City, 109 M. 589.

Property owner having knowledge of proceedings in matter of special assessment cannot maintain an action in equity to set them aside after half the tax for the improvement has been paid and a large part of the work been done.—Moore v. McIntyre, 110 M. 237.

Where one had joined in releasing right of way, had bid for part of the work and did not file his bill until all but himself and another had paid the tax, his bill to enjoin the collection was dismissed for laches.—Harwood v. Drain Commissioner, 51 M. 639. The collection of a paving tax will not be enjoined where the complainants have allowed the contractor to go on with the work without asking for relief and have reaped the benefit, with full knowledge that their lands were so situated that any assessment therefor would include said lands.—Lundbom v. City of Manistee, 93 M. 170. Land owners after standing by and permitting the construction of a drain without taking any steps to test the validity of the proceedings are estopped from thereafter denying the regularity of the proceedings.—Township of Walker v. Thomas, 123 M. 290.

In the absence of express charter provision for the entry of estimate on the record of common council, courts will not for the purpose of invalidating a municipal tax assume that no estimates were made from the fact that no entry thereof appears on the record.—Auditor General v. Hutchinson, 113 M. 245. A conveyance of land to trustees to secure an indebtedness is only a mortgage and does not preclude the owner from claiming the title in fee and seeking relief against an illegal tax.—F. & P. M. Railway Company v. Auditor General, 41 M. 635.

A purely statutory lien must conform exactly to the statutory conditions; but when it once attaches and is put in process of foreclosure the proceedings, while in part definitely fixed, are nevertheless in important particulars left to the general course of practice. No construction should be strained at in order to defeat them, but the rights of all parties should be harmonized and respected as far as is reasonably practical.—Sheridan v. Cameron, 65 M. 680.

Questions arising during trial will not be reviewed on mandamus where decision of circuit court was made for sole purpose of obtaining ruling by Supreme Court.—Walsh v. St. Clair Circuit Judge, 107 M. 26.

Auditor General's petition and proof of publication confer jurisdiction to enter decree.—Conley v. McMillan, 120 M. 694.

Where the limit of a legal assessment on one's property is fixed and ascertainable, one who resorts to equity to restrain the sale of his land for a tax of which he does not dispute the legality of certain items cannot object to the whole tax on the ground that there is no provision for distinguishing between what is legal and what is not, but must offer to pay what might have been legally assessed. One who seeks to restrain the enforcement of an excessive tax without tendering what he ought equitably to pay is liable for costs; but if he concedes a certain amount to be legal and offers to pay it, his bill ought not to be dismissed, as he has a right to the judgment of the court as to the remainder of the tax.—Connors v. Detroit, 41 M. 128. Where objections alleging illegality of certain taxes did not show how much was admittedly legal and how much alleged to be illegal, or set forth any facts from which the court could make the separation, held that the collection of a legal tax would not be enjoined in order to reach an illegal one under those circumstances. Whenever party concedes that a portion of his taxes are just, but disputes another portion, he is not entitled to the interference of equity to stay the execution of process unless he pays or offers to pay the legal part.—Palmer v. Township of Napoleon, 16 M. 176.

The law contemplates and provides for collection of both general and special taxes by chancery proceedings under the law. The burden is upon the owner to show the illegality of the tax, the presumption being in favor of its validity. —See Auditor General v. Maier, 95 M. 127; Auditor General v. Smith, 95 M. 132. On petition for decree, when court finds no lawful equalization, the decree should reject only that part of the tax subject to and dependent upon equalization and should not apply to township, school or other taxes not affected by failure of equalization.—Auditor General v. Gurney, 109 M. 472. It is permissible to assess platted lots together in certain cases, and decree entered as against one parcel is a determination of the legality of the proceedings.—Kneeland v. Hull, 116 M. 55.

FINAL DECREE: Failure to make final decree 10 days prior to the time fixed for sale will not render decree and sale void, defect being cured by Section 99.—Hooker v. Bond, 118 M. 255. The provision is directory.—Barnum v. Barnes, 118 M. 264.

All questions as to the validity of a tax upon lands are foreclosed by a valid decree for the sale of the lands for non-payment of the taxes.—Hall v. Mann, 118 M. 201; Spaulding v. O'Connor, 119 M. 45. Questions affecting proceedings anterior to the decree are cut off by the decree.—Wilkin v. Keith, 121 M. 66; Harrington v. Dickinson, 155 M. 161.

Decree properly signed and countersigned, entered in chancery record with date of filing appended, but no decree found in files and no calendar entry of decree. *Held*, sale thereunder not invalidated by omission in filing calendar entry.—Spaulding v. O'Connor, 119 M. 45.

Proceedings under a void decree would not affect subsequent regular proceedings.—Wilkin v. Keith, 121 M. 66. Prior decree setting aside the taxes may be relied on in cases where lands are included in decree of sale by reason of former decree not having been reported to Auditor General.—Thomas v. Auditor General, 120 M. 535.

ENTRY OF AMOUNTS DECREED: Failure of register to carry out in Tax Record under the head "Amount decreed against land," the amount fixed by the court renders decree void which was entered before the blank was filled.—Morgan v. Tweedle, 119 M. 350. Filling in the Tax Record the amounts decreed against the land after the signing of decree and by an employe in the county treasurer's office renders subsequent sale and tax title void.—First Baptist Church v. Roberts, 120 M. 704. See also Russell v. Chittenden, 123 M. 546. The validity of a tax deed may be attacked in a collateral proceeding by showing that the decree was void in failing to show an adjudication of any sum of money against the land.—Case v. Skinner, 121 M. 206.

The provision requiring the register of the circuit court to enter under the heading "Amount decreed against said lands" the total amount of the taxes held to be valid, does not apply to sales made under the decree of the supreme court.—Newton v. Powers, 131 M. 547.

A tax sale cannot be collaterally attacked by showing that the extension of the amount of the taxes against the land sold was made after the decree was signed.—Gates v. Johnston, 121 M. 663.

The entry in the Tax Record of the amounts decreed against the several descriptions is to be made by the county clerk and this should be done as soon as the court determines the several amounts. At the time of making any special orders, such orders must be entered in the Tax Record and signed or initialed severally by the judge.

See Secs. 67, 70, 99.

Decree fixing a date for sale earlier than that prescribed by statute is void.—Kennedy v. London & Lancashire Fire Ins. Co., 157 M. 411.

Record of decree.

SEC. 67. (4064) Such final decree shall be entered in the chancery record for recording decrees of such court, have the usual caption for decrees, and shall be substantially in the following form:

Form.

"STATE OF MICHIGAN,
The Circuit Court for the } In Chancery.
County of.................

At a session of said court held at the court house in the ....of........on the........day of........A. D. 18....

Present: Hon. .... Circuit Judge.

In the matter of the petition of .... Auditor General of the State of Michigan, for and in behalf of said State, for the sale of certain lands for taxes assessed thereon:

The said petition and the matters therein stated, and the objections filed to certain taxes therein claimed (if any such objections are filed) came on to be heard, and proof of the due publication of the order of hearing, and of said petition having been made and filed, and after hearing all parties interested therein: It is ordered, adjudged and decreed that the amount of taxes, interest, collection fee, and charges set down in the column headed 'Amount decreed against lands,' in the Tax Record of which said petition forms a part, are valid, and decree is made in favor of the State of Michigan therefor against each parcel of said land for the amount set down in said column opposite to such parcel. It is further ordered, adjudged and decreed that said several parcels of land, or such interest therein as may be necessary to satisfy the amount herein decreed against the same, shall be severally sold as the law directs, on the......day of May, A. D. 18.... beginning at ten o'clock a. m. on said day, or on the day or days subsequent thereto as may be necessary to complete the sale of said lands and of each and every parcel thereof, at the office of the county treasurer, or at such convenient place as shall be selected by him at the county seat of the county of .... State of Michigan. It is further adjudged and decreed that the several special orders made by this court, and entered on said Tax Record, are made a part hereof, with the same effect as if entered herein.

........................,
Circuit Judge.

(Countersigned),

....
Register in Chancery."

Execution for costs.

If costs are adjudged against any person contesting a tax the decree therefor shall be in proper form and execution awarded. The decree shall be signed by the judge and countersigned by the clerk. Immediately after the entry of such decree, the county clerk shall make a certified copy thereof, and annex the same to the tax record. He shall thereupon

Judge and clerk to sign decree.

Copy of decree annexed to tax record.

Tax record, where kept.

Continuance of hearing.

Final decree.

Supplemental decrees.

Copy of decrees to be annexed to tax record.

deliver such tax record to the county treasurer, in whose office the same shall remain, except as needed in the office of the county clerk. If from any cause the hearing on said petition is not had on the day fixed in the notice therefor, the same shall stand continued from day to day during the term without the entry of any order of continuance, until disposed of, and if it shall for any reason be found impracticable to hear and determine the objections to all of the taxes specified in such petition within the time herein fixed for that purpose, then and in that case the court shall, within the time herein named, make a final decree as to all taxes to which no objections have been filed, and also those to which objections have been filed, which the court has then heard and passed upon. Such decree shall be signed and recorded as hereinbefore provided. The court shall proceed with the consideration of the remaining taxes embraced in such petition, and objections thereto, and as soon as practicable dispose of the same by one or more decrees and in such form as the court may determine, which shall be entered in the chancery record of decrees of such court, and the same shall describe the lands and specify the total amount of taxes, interest and charges on each parcel thereof. The county clerk shall immediately thereafter deliver to the county treasurer a certified copy of such decree, to be kept and used as hereinbefore provided. Such copy of decree shall be annexed to the Tax Record and shall thereby become a part thereof. If from any cause no decree shall be made on such petition as to the taxes therein named, or any part thereof, the Auditor General shall, as soon as practicable, file a new petition for decree and sale, and proceedings thereon shall be the same and a decree and sale made as herein provided.

Appeal of contestant.

Payment condition precedent.

Appeal of Auditor General or county treasurer.

In case a decree is given in favor of the validity of any disputed tax, and the person contesting its validity desires to appeal to the supreme court, he shall be allowed to do so on paying the amount of the decree to the county treasurer, within ten days after the date of such decree, who shall retain the same until the decision of the supreme court, and pay the same to the party interested, if such tax is held invalid; if held valid then such money shall be credited to the proper fund. By such payment the land in question shall be discharged from the lien of the tax. In case the decision is against the validity of any tax, either the county treasurer or the Auditor General shall have a right to direct an appeal therefrom to the supreme court on behalf of the State, but there shall be no sale for the tax held invalid, until such decision has been reversed or modified by the supreme court.

Chancery practice.

The proceedings where the validity of any tax is in dispute shall, where no other provision is made herein, follow the ordinary chancery practice, and the court may allow amendments as in ordinary cases. Notice shall be given of all appeals to the supreme court, and such appeal shall be claimed, entered and bond for costs given, within twenty days after

Bond on appeal.

Settlement of record on appeal.

the making and entering of the decree. When the appeal is taken in behalf of the State, no bond shall be required. The judge shall, at the request of either party and on due notice, settle in proper form a case containing so much of the record and proceedings as may be necessary to the due understanding thereof by the supreme court, and if appeal shall be taken, such case shall be transmitted to such court. An appeal as to the tax on any parcel shall not delay or affect the proceedings for the sale of any land on which there has been no appeal.

History:—C. L. '97, 3890;—Am. 1899, p. 426, Act 262, Eff. Sept. 23.

DECREE: Surplusage in entitling does not invalidate decree.—Muirhead v. Sands, 111 M. 487. Where statutory decree is signed by judge, countersigned by clerk and entered in chancery record, the statute in that regard is fully satisfied.—Jenkinson v. Auditor General, 104 M. 34. The questions whether there is a tax due, whether it was properly assessed, and whether proper steps have been taken to charge the land after assessment, are concluded by the decree.—Muirhead v. Sands, 111 M. 487. Questions as to validity of tax and regularity of assessment and levy are foreclosed by decree. Ball v. Ridge Copper Co., 118 M. 7. Objection that no certified copy of decree was affixed to Tax Record will not be considered first on appeal.—Hooker v. Bond, 118 M. 255. Decree need not repeat descriptions, the Tax Record being part thereof.—Barnum v. Barnes, 118 M. 264. Omission in Tax Record of dollar mark, or any word or sign to show what figures in decree mean is fatal to sale thereunder.—Millard v. Truax, 99 M. 157. See also Russell v. Chittenden, 123 M. 546; Nowlen v. Hall, 128 M. 274.

An entry of a decree in the Chancery Record is sufficient although there is no calendar entry and no decree is filed.—Spaulding v. O'Connor, 119 M. 45.

A variance in date between the decree entered and the certified copy thereof attached to the Tax Record in the county treasurer's office is not a jurisdictional defect invalidating the tax sale proceedings.—Burns v. Ford, 124 M. 274.

The recording of decree in proceedings to sell land for taxes is the act of the clerk, and his omission does not invalidate a decree properly signed.—Hoffman v. Pack, 123 M. 74.

A tax deed issued by the Auditor General and unsupported by a valid sale the decree is void.—Citizens' Sav. Bank v. Auditor General, 123 M. 511.

The question as to the validity of a decree in tax proceedings cannot be raised in proceedings to quiet title to lands held under such unreversed decree. —Monroe v. Winegar et al. 128 M. 309.

The validity of a decree cannot be attacked for matters outside of the record.—Gage v. City of Saginaw, 128 M. 682.

A decree in tax proceedings, entered during vacation, is valid, and open to attack by reason of failure to give notice of its entry only in proceedings in the cause in which the decree was made.—Hoffman v. Flint Land Co., 144 M. 564; Temple v. Preston, 150 M. 486.

CONTINUANCE: Continuance beyond the term can only be by an order duly made and entered, and failing to so make and enter order the court loses its jurisdiction until a new petition is filed.—Muirhead v. Bergland, 111 M. 655. Continuance as to particular descriptions, and to a date subsequent to the sale, makes sale impracticable until the next annual sale. For this reason it is very generally desirable that, if the order sustains the tax it provide that if payment is not made before the next petition is filed it be included therein and decree of sale taken when that petition is heard.

TAX RECORD, ETC.: County treasurer's office shall be at the county seat.—Sec. 4, Art. X, Const.; 2374 C. L. '15. See Rice v. Shay, 43 M. 380. "County clerk" and "register" interchangeable terms and mean the same officer. Provision as to Tax Record being in county treasurer's office is not unconstitutional. The court can re-possess itself of Tax Record at will. That the Tax Record is to be delivered to the county treasurer, etc., does not render the act unconstitutional as relieving the court from the necessity of entering a complete decree to be retained in its own custody, since the court may at any time re-possess itself of the Tax Record.—Mersereau v. Miller, 112 M. 103.

When the Tax Record is delivered to the county treasurer he should see that it contains certified copy of the decree of sale and that the county clerk has entered in the proper columns the several amounts decreed and all special orders of the court.

Neither the original decree, the affidavit of publication, nor any other paper belonging in the county clerk's office can be filed in the Tax Record. They must be retained by the clerk.

No county, city or township books, records or files shall be removed from the office of the custodian thereof without an order of the judge, etc.—Act 92 of 1899.

APPEAL: Appeal from decree in tax proceedings is properly dismissed for failure to comply with the usual rules of equity practice.—Carney v. Baldwin, 95 M. 442. Where owner contesting a tax in proceedings for enforcement fails to raise the objection that two contiguous parcels should have been assessed separately, he is estopped from such objection on appeal granted in such case.—Auditor General v. Maier, 95 M. 127. In Lange v. Circuit

Judge, Mich. Mandamus Cases 922, order to show cause why mandamus should not issue to vacate an order granting a re-hearing after the time for appeal had elapsed, where the petition for re-hearing was without the certificate of counsel as required by Rule No. 81 and the court at the hearing thereof allowed such certificate to be filed nunc pro tunc, and where such certificate is that of the counsel who appeared for the petitioner, was denied.

A finding of fact by the court will not be disturbed on appeal, except where there is a total want of evidence to support it, or it is contrary to the evidence.—Hoffman v. Silverthorn et al., 137 M. 60.

A point not raised below will not be considered for the first time on appeal. —City of Menominee v. S. K. Martin Lumber Co., 119 M. 201. On an appeal to review the legality of a tax assessment paid under protest only the ground mentioned in the protest will be considered.—Aurora Iron and Mining Co. v. City of Ironwood, 119 M. 325. The Supreme Court will not reverse an order or decree in chancery for a mere irregularity not affecting injuriously appellant's interests.—Kellogg v. Putnam, 11 M. 344.

Where payment of the taxes is made on appeal as provided in this section the county treasurer is not to make duplicate tax receipt for the taxes until the appeal is decided, but may give the payer a receipt for the amount. If the taxes are finally sustained he should then make duplicate receipts in the usual form, under date of the original payment, taking up the receipt first given and sending the regular duplicate to the Auditor General at once.

ENROLLMENT: Sec. 12805-6n C. L. '15. Exact compliance with the rule for enrollment is impossible, but a certified copy of the printed petition, including the list of lands and taxes, may be used in lieu of the original petition (the Tax Record). In this way it would appear to be practicable to enroll the case, and this should be done as soon as the files are complete, including the report of sale, the order of hearing, the proof of publication and the decree or decrees made by the court.

Tax sale is not rendered void by non-enrollment of decree before sale, the general statute not being applicable to the tax proceedings.—Youngs v. Peters, 118 M. 45; Hall v. Mann, 118 M. 201; Hooker v. Bond; 118 M. 255; Barnum v. Barnes, 118 M. 264; Shefferly v. Auditor General, 120 M. 455. But court may amend decree after the term at which it was entered before enrollment, and no bill of review is necessary in such case.—First Baptist Church v. Roberts, 120 M. 704.

See Secs. 66, 70, 99, 100.

State bids.

SEC. 68. (4065) If for any reason the treasurer of any county shall fail to offer the lands lying therein and included in the decree for sale for delinquent taxes thereon, then so many of such lands so included in such decree as shall not be so offered for sale, shall be considered and treated as if bid off to the State by the county treasurer, and shall be subject to redemption and sale in the same manner and within the same time as may be provided by law in the case of lands actually bid off for the State as provided in this act. All lands bid off for the State as provided in this section shall continue liable to be taxed in the same manner as if not held as belonging to the State, and all such taxes shall be a charge and lien upon such lands as in case of other tax lands, except as hereinafter provided.

State tax lands taxable.

History:—C. L. '97, 3891.

Lands acquired by State under this section may be sold under Section 84.—Mann v. Carson, 120 M. 631.

If the Auditor General's instructions for the sale are carefully observed there will be no lands that are not sold individuals or bid to the State before the sale is closed.

Lands of incompetent persons.

SEC. 69. (4066) Whenever it shall be satisfactorily shown to the court that any lands included in such petition as delinquent for taxes shall belong to infants, minor heirs, idiots or insane persons, without guardians or without any other means of support, the court is, in his discretion, authorized to withhold such lands from sale, until a settlement of such person can be made, and a guardian chosen or appointed to protect the rights and interests of such person: *Provided*, Such withholding shall not act to prejudice the lien of the State, county or township for such taxes, or the right to include the

Proviso.

Cancellation, etc., of sale.

same in any subsequent petition for sale as in this act provided. In case of the sale of lands belonging to any infant, idiots, minor heirs, insane or incompetent persons, if it shall appear to any court that it is necessary to protect the rights of such incompetent person, to order any sale canceled, or deferred, it may so order, and in such case all proceedings may be stopped, sale canceled or action stayed until the proper proceedings can be had to protect the rights and property of such incompetent person or persons.

History:—C. L. '97, 3892.

Section applies also to incompetents not under guardianship.—Foegan v. Carpenter, 117 M. 89. As to infants rights see Ballentine v. Clark, 38 M. 395.

Laches in filing bill to establish his rights is not imputable to a minor nor to any person incompetent to act in his own behalf.—Dragoo v. Dragoo, 50 M. 573. See Sirr v. Miller, 121 M. 598.

Under the power given by the court to cancel sale of lands of incompetent persons and others, if necessary to protect them, such cancellation may be decreed after a deed of the tax lands has been made by the State to the purchaser, and after a conveyance has been made by him to another.—Young v. Blanchard, 165 M. 340.

But the owner will be compelled to do equity by refunding to the tax purchaser the amount which was paid to purchase, together with interest.—Idem.

One mentally incompetent and under guardianship at the time of the assessment of her property for taxes and the sale thereof for non-payment of taxes, is entitled to equitable relief under this section.—Graham v. Nippress, 222 M. 386.

OF SALE BY COUNTY TREASURER.

Sale of delinquent lands.

Each parcel to be separately offered.

Sale of smallest interest.

Sale at county seat.

Immediate payment required.

Penalty for non-payment.

SEC. 70. (4067) On the first Tuesday of May, beginning at ten o'clock a. m., the county treasurer shall commence the sale of the lands mentioned in the decree upon which the amounts charged shall not have been paid, and shall continue the same from day to day, Sundays and other legal holidays excepted, until so much of each parcel shall be sold as shall be sufficient to pay such amounts. Each parcel described in the decree shall be separately exposed to sale for the total taxes, interest and charges and the sale shall be made to the person paying the full amount charged against such parcel, and accepting a conveyance of the smallest undivided fee simple interest therein. No greater interest in any parcel shall be sold than is sufficient to pay the amount of the tax on which the same is sold. If no person will pay the several taxes and charges and take a conveyance of less than the entire thereof, then the whole parcel shall be offered and sold. The sale shall be at the county seat, at the office of or at such convenient place as shall be selected by the county treasurer, and shall be subject to the taxes assessed subsequent to taxes included in the decree and for the year for which the sale is made. The county treasurer may, in his discretion, require immediate payment of any person to whom any parcel of such land may be struck off, and in all cases where payment is not made in twenty-four hours after sale, he shall declare the bid canceled and sell the land again; and any person to whom any parcel of land shall be so struck off neglecting for twenty-four hours after the close of such sale to pay to the county treasurer the amount of such bid, shall forfeit to the State five times the amount of such bid, and costs of suit therefor, which amount may be recovered in the name of the people of the State of Michigan in an action of debt, in any court of competent jurisdiction, and it shall be the duty of the county treasurer and prosecuting attorney of the county to prosecute for all such delinquencies and penalties without unnecessary delay. Any subsequent bid of such person made at the sale may be disregarded by the treasurer. If any parcel of land cannot be sold for taxes, interest and charges, such parcel shall be passed over for the time being, and shall, on the succeeding day, or before the close of the sale, be reoffered; and if, on such second offer, or during such sale, the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same in the name of the State, for the State, county and township, in proportion to the taxes, interest and charges due each. And in such case the taxes assessed on the lands so bid off to the State and the interest and charges thereon, shall remain a lien upon said lands, and any person or persons may thereafter purchase such lands of the State, as State tax lands or otherwise, as provided in this act. The county treasurer shall enter in the proper columns of the Tax Record the interest in lands sold, the name and postoffice address of each purchaser opposite each parcel of land sold, and the word "State" opposite each parcel bid off in the name of the State. Certificates shall be given to each purchaser of the lands and interest bid off by him, showing the year's tax for which he has purchase, and also the amount thereof, and of all charges paid by him at the time of such purchase, stating that he will be entitled to a deed after the period of redemption provided for in section seventy-four has expired, and that if the sale is not confirmed the money will be returned. As soon as possible after the conclusion of any sale, and within twenty days after the day named in the notice for the commencement thereof, the county treasurer shall make and file with the clerk of the court a report of such sale, therein referring to the Tax Record for the particulars thereof. All sales shall stand confirmed, subject to the right of redemption provided for in section seventy-four, unless objections thereto are filed within eight days after the time limited for filing such report, without the entry of an order or further notice. The practice with reference to setting aside such sale shall be the same, so far as applicable, as in a sale in equity on the foreclosure of mortgages: *Provided*, No sale shall be set aside for inadequacy of price, except upon payment of the amount bid upon such sale, within interest and costs: *Provided further*, That no sale shall be set aside after confirmation, except in cases where the taxes were paid, or the property was exempt from taxation. In such cases the owner of such lands may move the court at any time within one year after he shall have notice of such sale to set the same aside, and the court may so order upon such terms as may be just. As soon as practicable after sales are confirmed, the county treasurer shall make full report of the same to the Auditor General, in such form as the Auditor General shall prescribe, giving a description of the property sold, the amounts for

Re-offer of unsold parcels.

State bids for several interests.

Taxes and charges continue a lien.

Entry of sale, etc., in tax record.

Certificates of sale.

Report of sale.

Confirmation.

Sales set aside.

Proviso.

County treasurer to report to Auditor General.

Auditor General to issue deeds.

Lands bid to State, taxable.

Unsold lands readvertised.

Purchaser shall also take from State tax land list.

Void sales.

Money receivable.

Proceeds paid to State Treasury.

Payment of expenses.

which the same was sold, and the names and addresses of the purchasers, and thereupon the Auditor General shall, after the period of redemption provided in section seventy-four has expired, execute deeds to the purchasers in such form as shall be determined by him. All lands bid off in the name of the State shall continue liable to be taxed in the same manner as if they were not the property of the State except as hereinafter provided. If from any cause the lands, or any parcel thereof decreed for sale by the Auditor General, shall not be sold as advertised, it shall be the duty of the Auditor General to cause sale to be made at such other time as he may fix for that purpose, of which notice shall be published at least four weeks prior to such day, and such notice shall contain a description of the lands and the amount claimed thereon, as hereinbefore provided in the first instance. The sale and all proceedings thereon shall be the same as if made on the first day fixed therefor: *Provided*, That if any parcel sold under the provisions of this section shall also be offered at the same sale as State tax lands, the purchaser must also at the same time become the purchaser from the State tax land list, and pay the taxes, interest and charges remaining unpaid thereon, for all years for which such land is held as State tax land. All sales made in contravention of this requirement shall be void. The several county treasurers shall receive on such sale only such funds as shall be receivable at the State Treasury, and all moneys received at any tax sales that belong to the State shall be paid into the State Treasury, and the expenses of advertising and sale shall be paid therefrom on the warrant of the Auditor General, and the remainder shall be placed to the credit of the general fund.

History:—Am. 1897, p. 286, Act 225, Imd. Eff. May 29;—C. L. '97, 3893;—Am. 1899, p. 428, Act 262, Eff. Sept. 23.

In all proceedings to collect the taxes after they are returned to the Auditor General or to sell the lands to enforce payment, the county treasurer is the agent of the Auditor General and does not act as a mere county officer.—Palmer v. Rich, 12 M. 414. See Secs. 93-4. But in conducting tax sales is not acting as agent of the State in such a sense as to put his action in this regard outside his official duties as treasurer and thereby make the loss by his default in accounting for the moneys received by him on such sales that of the State and so not chargeable to the county under the statute.—Attorney General v. Supervisors St. Clair Co., 30 M. 388. The statute imposes upon the Auditor General the entire authority and contral over the sale of lands delinquent for taxes. The county treasurer in making the sale acts under his direction.—Clark v. Mowyer, 5 M. 462. The auditor General cannot directly or indirectly postpone tax sales beyond the date fixed by law.—Houghton Co. v. Auditor General, 41 M. 28. If on re-offer before close of sale it is found impossible to sell, land may then be bid to State; not necessary that sale be kept open 20 days.—Barnum v. Barnes, 118 M. 264. But such re-offer should not be until after the first offer has been made of the entire list of descriptions, and in no event before the second day of sale.

In Taylor v. Snyder, Walker's Chan. Rep. 490, party interested in certain land attended tax sale, but was prevented from buying by the fraudulent conduct of one to whom the land was struck off, but who failed to pay. On a subsequent day, in the absence of the interested party, the sale was made to another, in privity with the one to whom the sale was first made. *Held*, that in a bill to have the sale declared fraudulent and void it was not necessary to offer to refund the money paid by the purchaser for the tax title fraudulently obtained by him, and that he must lose what he paid.

A purchaser from the county treasurer of State tax lands does not have to pay the taxes then a lien.—Munroe v. Winegar, 128 M. 309.

A purchaser of the State tax title is obligated by law to purchase for such years as remain unpaid, for all years which such land is held as State tax land.—Hoffman v. Auditor, 136 M. 689.

A tax sale made by a clerk in the office of the treasurer is void. Official acts must be performed by an officer.—Hall v. Collins, 117 M. 617.

The certificate of purchase showed that the complainant purchased the whole tract, but the record of county treasurer showed a purchase of 5-6. The court says when the certificate and entry conflict the entry should be treated as the original entry.—Kneeland v. Hull et al. 116 M. 55.

An irregularity in failing to include a strip of land in a description is not jurisdictional, and where the owner permits the case to proceed to a decree, the question whether the land is properly assessed and whether proper steps have been taken to charge the land after assessment becomes res adjudicata.—Keho v. Auditor General, 138 M. 586.

WHO MAY PURCHASE: See notes to Secs. 7 and 84. Purchase by mortgagee.—Fells v. Barbour, 58 M. 49. Also Porter v. Corbin, 124 M. 261.

A book kept by a county treasurer containing statements of various tax sales, the names of the purchasers and other items connected therewith, though not such a book as was distinctly required by any statute to be kept, held to be an official book and admissible as evidence to prove the facts therein stated.—Groesbeck v. Seeley, 13 M. 329.

Order of confirmation not necessary to the validity of sale. Owner not having moved to set aside sale within eight days provided for confirmation cannot thereafter in a collateral proceeding attack the sale on the ground that treasurer's report to the court did not show that the land had been offered a second time before it was bid to the State.—Hilton v. Dumphy, 113 M. 241. Sale stands confirmed without the entry of an order unless objections are filed within the statutory period.—Conley v. McMillan, 120 M. 694.

After the confirmation of the decree for the sale of delinquent tax lands, tax sales and deeds issued thereunder can be set aside for only three reasons: (1) That the taxes were paid. (2) That the land was exempt from taxation. (3) Lack of jurisdiction to enter the decree.—Rumsey v. Griffin et al., 138 M. 413.

Neither county treasurer nor his deputy may purchase at tax sale.—Wait v. Gardiner, 123 M. 236. See also Porter v. Corbin,, 124 M. 261.

County treasurer cannot become a purchaser at annual tax sale.—Clute v. Barron, 2 M. 192.

By procuring a deed from the purchaser of a tax title for taxes which the life tenant ought to have paid, the latter acquired no additional interest, but quieted title to the property and in legal effect paid the taxes.—Heilwig v. Nybeck, 179 M. 292.

One holding under contract cannot acquire title against his grantee.—Curran v. Banks, 123 M. 594.

The purchase of tax titles by plaintiff's grantees, assuming plaintiff to be a tenant in common with his grantees, did not inure to the benefit of plaintiff, as no relation existed between plaintiff and his grantee which required either to pay the taxes.—Olmstead v. Tracey et al., 145 M. 229.

One whose duty it is to pay taxes cannot obtain a tax title separate and distinct from the original title.—Clippinger v. Auditor General, 135 M. 1.

In purchasing at a tax sale the State holds as an individual.—Auditor General v. Supervisors, 36 M. 75. See also Conn, Mutual Life Ins. Co. v. Wood, 115 M. 444; Allen v. Cowley, 128 M. 530; Morse v. Auditor General, 143 M. 610.

REPORT TO CLERK: Failure of county treasurer to make and file report of sale invalidates sale.—Millard v. Truax, 99 M. 157. Report of sale lacking details, but referring to Tax Record, etc., held sufficient.—Jenison v. Conklin, 114 M. 9. Report of sale when filed with clerk, where statute contemplates it is to remain, operates as notice to all concerned, but cannot be regarded as thus filed when it is attached to the tax record. Although filing report is a condition subsequent to the sale, such filing, for the purposes of giving effect to the deed and the vesting of title, must be treated as a condition precedent. Purchaser is bound to see the law has been complied with. Report of sale cannot be amended after period of redemption has expired.—Jenkinson v. Auditor General, 104 M. 34. Curative provisions of Section 99 do not apply to failure to file report.—McFadden v. Brady, 120 M. 699.

Treasurer's report of sale filed in office of county clerk bearing the endorsement of the clerk of such filing is sufficient evidence that report was made.—Temple v. Preston, 150 M. 486.

REPORT TO AUDITOR GENERAL: Report to Auditor General dated on day fixed for sale is erroneous; should be dated on conclusion of sale; but defect was cured by confirmation. No precise time is fixed for making report to Auditor General and report made ten days after confirmation held to be within reasonable time.—Detroit F. & M. Ins. Co. v. Wood, 118 M. 31. County treasurer has a reasonable time in which to make his report to Auditor General.—Youngs v. Peters, 118 M. 45.

Parties having rightful possession of land may before the time of redemption expires lawfully take from the premises whatever the removal of is not injurious to the freehold. As to what constitutes waste, see Ward v. Carp River Iron Co., 47 M. 65; Webster v. Peet, 97 M. 326.

"This court has not held and it ought not to hold that an effort to obtain information for the purpose of avoiding a tax is the equivalent of an honest effort to pay the tax."—Bullock et al. v. Auditor General et al., 142 M. 122.

ACTION TO SET ASIDE: A much stronger case must be made to set aside a sale under a decree in chancery after confirmation of the report of sale than before.—Bullard v. Green, 10 M. 268. A purchaser under decree must ascertain at his peril whether the decree was warranted or not, and though the time for appealing from the decree had expired when he purchased, he cannot claim immunity from the effects of a subsequent order without notice to him setting the decree aside as unwarrantedly entered.—Ritson v. Dodge, 33 M. 463. Purchaser at a judicial sale must be considered as having submitted himself thereby to the jurisdiction of the court as to all matters connected therewith; and when he has notice of a motion to set aside the sale, and in answer thereto appears and without objection goes to a hearing on the merits, he is not in position to afterwards object to the power of the court to decide such motion.—Blair v. Compton, 33 M. 414. Payment or offer of so much of the tax as is equitable must be made before proceedings to vacate the sale. A bill in equity will not lie to set aside a sale because of non-jurisdictional irregularities that work no injury.—Sinclair v. Lerned, 51 M. 335. In Wiley v. Circuit Judge, Mich. Mandamus Cases 710, order to show cause why mandamus should not issue to compel respondent to reopen a decree (in June 1891) after sale made in May, 1890 and allow relator to file answer was denied. Claim not included in petition filed to set aside sale cannot be considered on appeal.—Hall v. Mann, 118 M. 201.

If the tax-payer petitions the court in chancery in the Auditor General's proceedings to foreclose a lien the court will compel him to do equity.—Conn. M. L. Ins. Co. v. Wood, 115 M. 444.

That defendants did not occupy such confidential or fiduciary relations to petitioner through the information imparted to them by her agent of her inability to pay the taxes, as would make it the duty of the defendants in equity to pay.—Ball v. Harphan et al., 140 M. 661.

Provision and that in Sec. 98 are concurrent.—Wood v. Bigelow, 115 M. 23; Kneeland v. Wood, 117 M. 174. Sale will not be vacated for the reason that the property is valuable and the amount of the taxes is small.—Nester v. Church, 121 M. 81.

In direct proceeding to set aside an irregular decree the rule that "a record is conclusive evidence of its own verity" is not applicable.—Wilkin v. Keith, 121 M. 66.

Equitable relief.—See Albany & Boston Mining Co. v. Auditor General, 37 M. 391. One who seeks relief from a void tax sale in a court of equity will be compelled to do equity.—Connecticut Mutual Life Insurance Co. v. Wood, 115 M. 444. Bill in chancery to impeach decree establishing title must be brought within a reasonable time.—Campau v. Van Dyke, 15 M. 371. No ground for setting aside decree of sale that there was not sufficient time between final publication and time fixed for hearing for non-resident land owner to reach place of trial from his place of residence.—Waldron v. Auditor General, 109 M. 231.

An appeal under Sec. 70 of the tax law, on the ground that the taxes have been paid, is a general chancery appeal and no bond is required under Sec. 140 of the general tax law.—Hayward v. O'Connor, Trustee, et al., 142 M. 230.

A court of chancery has no power to open a decree in tax proceedings for mere irregularities of procedure upon a petition filed after confirmation of sale.—Spaulding v. O'Connor, 119 M. 45. A chancery judge has no authority to grant leave to file a bill of review for the purpose of setting aside a tax sale after confirmation of the sale, unless a total want of jurisdiction to make the decree is shown or one of the two causes mentioned in Sec. 70 of the tax law exists, and the hearing must be confined to these causes.—Berkey v. Burchard, 119 M. 101-105; Brooks v. Auditor General, 119 M. 329; Klotz v. Sloan, 160 M. 483; Clothier v. Miller, 173 M. 530; Grand Haven Arbiter Unterstutzungs Verein v Soule, 175 M. 210.

Where a land owner with full knowledge of all the proceedings permits his land to be sold for delinquent taxes and allows two years to elapse without taking any steps provided by law to test the validity of the proceedings, he cannot thereafter, and after third parties have become interested in products severed from the land, file a petition to reopen the decree entered in the original proceedings.—Cook v. Hall, 123 M. 378.

Where the rights of third parties have intervened in tax sales, these rights cannot be litigated except in some original proceedings in which such third persons may be made parties and have an opportunity to answer and defend.—Bending v. Auditor General et al., 137 M. 500; McFarlane v. Simpson, 153 M. 193; G. F. Sanborn Co. v. Alston, 153 M. 456.

Proceedings in chancery for the sale of lands delinquent for taxes on petition of the Auditor General are pursuant to a special and limited authority conferred by the statute and the rule which obtains in cases which fall within the ordinary jurisdiction of chancery courts that if the court has jurisdiction of the parties and the subject matter its decree though erroneous is binding until set aside, is not applicable to such proceedings.—Wood v. Bigelow, 115 M. 123.

It is settled as between the State and the original owner the title to lands sold for non-payment of taxes becomes absolute in the State on a regular sale.—quoting Robbins v. Barron, 32 M. 36; Connecticut Mutual Life Insurance Co. v. Wood, 115 M. 444; Allen v. Cowley, 128 M. 530; Hickey v. Rutledge, 136 M. 128. See also Morse v. Auditor General, 143 M. 610.

A sale made by the Auditor General under the provisions of the tax law of 1899 will not be vacated in a direct proceeding solely on the ground that the report of sale failed to show that the land was reoffered for sale as provided by Sec. 62 of the tax law of 1889, where affidavits were presented to the effect that the sale was properly made and there was no proof offered to the contrary.—Dumphy v. Auditor General, 123 M. 354.

See Secs. 72, 80, 106, 144.

Complainant's amended bill filed to set aside a sale for unpaid taxes held properly stricken from the files as to the Auditor General, by reason of failure to set up want of juristiction in the court making the decree, and failure to bring herself within the provision of Section 70 of the tax law.—Carpenter v. Auditor General, 144 M. 251.

Under C. L. Sec. 4067, providing that no sale of land for taxes shall be set aside after confirmation, except in cases where the tax had been paid or the property was exempt, a complaint in a bill of review to set aside a confirmed sale. where there is no showing that the taxes were paid or the land redeemed or exempt, is not entitled to the relief prayed if the court obtained jurisdiction in the tax sale proceedings, and so far followed the statute as to retain it.

C. L. Sec. 4059 provides that, on the Auditor General filing a petition for a sale of lands for taxes, the county clerk shall present it to the circuit judge, who shall make an order setting the petition for hearing and providing for the sale, which order shall be countersigned by the clerk as register in chancery, and shall be recorded by him in the proper book of his office, a copy of which the clerk shall thereupon send to the Auditor General.

Sec. 4063 declares that the publication of the petition and order shall be equivalent to personal service of notice of the sale. *Held*, that the requirement of the recording of the court's order is not jurisdictional, so as to invalidate the tax sale proceedings on account of a failure to record it at length.

A variance in date between the decree entered in the circuit court for the sale of lands for taxes on the petition of the Auditor General and the certified copy thereof attached to the tax record in the county treasurer's office under which sale is had is not a jurisdictional defect invalidating the tax sale proceedings.

Where a county treasurer's report of a tax sale to the Auditor General, made before its confirmation, shows that, in every case where parcels are marked as having been bid in by State, such parcels, on being originally offered, were passed over for the time being, and were re-offered before the close of the sale, but could not be sold for the total amount of the taxes, interest, and charges against them, and that thereupon and for that reason the county treasurer bid off the same in the name of the State, such report is not defective, as failing to show that the lands were duly offered in their regular order, nor, if it were, would that be a jurisdictional defect, invalidating the tax sale proceedings.

Where the State purchases land for taxes for a certain year, and the defendant purchases the State's title, and at the same time purchases the lands for the taxes of the succeeding year, and the sale for the taxes of the succeeding year is void, it is not a tenable objection to defendant's title that, as it does not appear that he would have purchased the State's title except that he wanted to bid for the taxes of the succeeding year, the purchase of the State's title should fall with the other.—Burns et al. v. Ford et al., 124 M. 274.

That the bill should have been dismissed with costs to defendants as the effect of the decree is to deprive defendants of their costs though the bill of review was dismissed and complainant obtained a longer time to redeem.—Phelps et al. v. O'Connor et al., 137 M. 625.

Plaintiff being a tenant in common could not make a valid lease of the whole premises. Lee v. Livingston, 143 M. 203.

A tenant in common cannot acquire a title as against his co-tenants by purchase of the entire premises at a sale for taxes assessed during the period of the co-tenancy. A father in possession cannot obtain title by adverse possession as against his own children, nor can he acquire their title by the purchase of a tax title.—Dahlem v. Abbott et al., 146 M. 605.

In a summary proceedings before the circuit court commissioner the tenant was estopped from claiming ownership by purchase of the premises for taxes where the title was vested in the purchaser at the time the premises were rented.—
—Balch v. Radford, 182 M. 292.

On a bill filed to remove the cloud of tax sales from a title, and to set aside the sales made to a third party under the State tax homestead law, the decree for the sale cannot be attacked in a collateral proceeding.—Owens v. Auditor General, 147 M. 683.

Application to file a bill of review in proceedings for a writ of assistance in tax proceedings denied on the showing that petitioner has delayed for four years to file the petition, and that petitioner permitted the purchasers of the tax title to pay the taxes for that period, although he purchased the title for one year, the non-payment of which by the defendants was a fatal defect in their title. Brown et al. v. Fitzpatrick et al., 143 M. 636.

Leave to file a bill of review will not be granted in a tax proceeding after confirmation of sale, where the parties seeking relief have been guilty of laches and rely upon a technical point rather than a meritorious one, and relief may be denied notwithstanding an irregularity in the decree, where equity and justice demand it.—Tromble v. Hoffman, 130 M. 676.

Held, that when owner filed petition eight months after he learned that defendant had bought the timber two years before and the land six years before, he was guilty of laches and would not be permitted to open a decree selling the land.—Bending v. Aud. Gen'l., 137 M. 500.

"The practice with reference to setting aside such sale shall be the same, so far as applicable, as in a sale in equity on the foreclosure of mortgages" should be held to apply *only* to the procedure in the suit brought by the Auditor General where, in that proceeding, the sale is attacked.—Croskery v. Busch, 116 M. 288.

Where objections to the sufficiency of proceedings in tax cases are not made in the trial court, such objections will not be reviewed on appeal.—Auditor General v. Chase, 132 M. 636.

Though suit might be brought against the Auditor General to test the legality of a tax before sale, (Palmer v. Rich, 12 M. 414) it is practically a suit against the State if brought afterwards and cannot be maintained without consent.—Ambler v. Auditor General, 38 M. 746.

No sale will be set aside for irregularity even within one year except where tax was paid or land exempt, although Sec. 73 fixes five years.—Spaulding v. O'Connor, 119 M. 45. See also Aztec Copper Co. v. Auditor General, 128 M. 615; St. Mary's Power Co. v. Chandler, 133 M. 470.

The omission to reoffer was an irregularity merely.—Dumphey v. Auditor General, 123 M. 354.

An irregularity in including exempt land belonging to another in a description on land liable to taxation will not avoid a decree for the sale of the land for unpaid taxes.—Smith et al. v. Auditor General, 138 M. 582.

A decree may be set aside by petition after one year where the court had no jurisdiction to make it providing the petitioner shows strong equities in his favor and has not been guilty of laches.—Aztec Copper Co. v. Auditor General, 128 M. 615, citing Spaulding v. O'Connor, 119 M. 45, and Benedict v. Auditor General, 104 M. 269.

The court cannot open the decree after one year under Brooks v. Auditor General, 119 M. 329, and Schefferley v. Auditor General, 120 Id. 455. See also Smith v. Auditor General, 138 M. 582.—Blondin v. Griffin, 133 M. 647.

Section 70 of the tax law provides that where taxes are paid the owner shall have one year after notice of a sale for taxes to move the court to set aside the sale. *Held,* that any notice to the owner of the land that it is sold for taxes is sufficient.—Hayward v. O'Connor, Trustee, et al., 145 M. 52; Hall v. Miller, 150 M. 300.

In view of Section 70 providing that no sale shall be set aside after confirmation except where tax was paid or the property exempt, a sale made pursuant to a decree * * * whether enrolled or not, cannot be set aside after confirmation because the taxes were not paid through oversight of the owner's agent, and the owner did not discover it until after confirmation.—Brooks v. Auditor General, 119 M. 329.

The objection to tax titles that the land had been bid in by the State for the previous years, and was still held by the State cannot be raised collaterally.—Hoffman v. Pack, 123 M. 74.

Where a parcel of land is sold from the tax record in disregard of the titles held by the State under sales of prior years, the sale would be absolutely null and void and not voidable merely, and the purchaser could not claim any right to purchase the prior years from the Auditor General and the Auditor General would be under no more obligation to sell to him than to any other person.—Op. Attorney General, 1894, p. 145.

Where there is a valid assessment and a decree for the sale of land for nonpayment of taxes, all questions except that the taxes were paid, the property exempt, or the court was without jurisdiction, are foreclosed by the decree.—Harrington v. Dickinson, 155 M. 161.

A pro confesso decree is as binding upon the parties thereto upon all questions involved as is a contested decree on the same questions.—Harrington v. Dickinson, 155 M. 161.

Where the owner of the original title, tenders to the Auditor General an amount sufficient to purchase State tax land and within a reasonable time after such tender, files a bill to set aside a void sale, he is not guilty of laches.—Horton v. Salling, 155 M. 502.

The limitation as to time does not apply to lands owned by incompetent persons.—Young v. Blanchard, 165 M. 340.

The fact that the property of two or more persons is assessed as one description, is not sufficient for setting aside a decree for the sale of land so assessed.—Loud v. O'Brien, 167 M. 206.

One purchasing at the county treasurer's sale from the tax record, must, if the description is held as state tax land for taxes of other years, also purchase for the years thus held.—Grand Haven Arbiter Unterstutzungs Verein v. Soule, 175 M. 210.

A purchase of a tax title by the wife of a life tenant, occupying the premises jointly with her husband, inures to the benefit of the remainderman to whom the life tenant owed the obligation to pay the tax.—Myers v. Myers, 186 M. 215.

Where a land owner petitions the equity court to set aside a tax deed as a cloud upon his title, the court may require him to reimburse the owner of the tax title for the amounts paid.—Legg v. Bower, 212 M. 403.

RULES FOR SALE: The following are among the rules prescribed by the Auditor General for the annual tax sales by county treasurers:

1. County Clerk's Entries.—On receiving the first (original) copy of the Tax Record from the County Clerk, after decree has been entered, see that he has made the proper entries in columns 14 and 22; also in column 23, provided any explanation is necessary to perfect understanding of any order made by the court. *If the Clerk has not made these entries you will report the fact to the Auditor General by telegraph or telephone as soon as the Tax Record is delivered to you.* Under no conditions is it permissible for the County Treasurer or any attache of his office to enter the amount decreed in the original Tax Record.

2. Copy of Decree.—Do not fail to see that a certified copy of the decree is entered in or affixed to the Tax Record when received from the County Clerk. If the certificate does not bear the seal you will cause the Clerk to impress or affix it before you proceed with the sale.

3. Read the Law.—Before offering the first parcel in the Tax Record read Section 70 of the Tax Law of 1893 (Act 206), as amended by Act 262 of 1899, in the hearing of those then in attendance upon the sale; and it is suggested that from time to time, as may seem desirable by reason of the arrival of other bidders than those in attendance at the commencement of the sale, you call attention to its provisions. Announce clearly that the provisions of said section constitute the conditions and terms of the sale, and in all cases you will be governed by the requirements thereof.

4. Sell in Order.—Having entered (1) in column 16 of the Tax Record the amounts paid before sale, (2) in column 17 the amounts charged against descriptions which are to be withheld, and (3) in column 23 such notes as are indicated by the heading thereof, you will commence and continue the sale as hereinafter

directed, and in the order in which descriptions appear on the list from which the sale is being made.

5. Hours of Sale.—The decree of sale and the published notice fix the hour for opening the sale at 10 a. m., and therefore *no sales can be made before that hour,* on May 1, and *no sales can be made before that day.* It is suggested that the hours of sale be from 10 a. m. (standard time) to 12 M., and from 2 to 5 p. m., each day during which the sale is in progress.

6. Adjournments.—At each adjournment public announcement should be made of the hour to which adjournment is had, but *no adjournment should be made beyond the day following* the day on which adjournment is had, except the adjournment from Saturday should be to the following Monday.

7. Close of Sale.—*The sale should be concluded as soon as practicable,* but in no case should final adjournment be had until (1) every description on the Tax Record (not withheld from sale) has been offered in the manner herein indicated, and (2) until such descriptions on the Tax Record as have not been sold on the first offer have been reoffered on a day subsequent to the day on which they were first offered, and in the same manner, and (3) until each description on the State Tax Land list has been so offered and reoffered. When all this has been done the sale should be closed, and your report on blank No. 468 made and filed and one copy thereof sent to this department. This report must be made on or before May 21st.

8. No Private Sales.—*No sales can be made by you except at public sale.* County Treasurers have no authority to sell either from the Tax Record or the State Tax Land List, at private sale, and sales so made would be voidable, if not actually void. No valid sales can be made by County Treasurers before the sale opens, during any adjournment, or after the public sale is closed.

9. Clerk Cannot Sell.—The sale must be made by the County Treasurer or the Deputy County Treasurer. It cannot be made by a clerk, nor any other person than the officers named.

10. Treasurer or Attache Cannot Purchase.—Neither the County Treasurer, the Deputy County Treasurer nor any attache of the County Treasurer's office can purchase at the tax sale, either for himself or as the agent of any person. In every instance where remittance is made to the County Treasurer with request to purchase lands at the sale, the sender should be advised that the request cannot be complied with, and that the remittance will be returned or retained subject to application upon purchases made by the sender or some proper agent, as he may direct.

11. Signatures to Certificates.—Every certificate of sale issued must be signed by the County Treasurer (or by the Deputy County Treasurer) and not by any clerk in the office. Certificates not so signed cannot be accepted for deeds. The County Treasurer's name must not be affixed by a stamp.

12. Payments on Appeal.—In any case where decree of sale has been entered and appeal is taken therefrom, as provided in Section 67, you will give the party appealing an ordinary commercial receipt for the amount decreed, and will hold such payment until the appeal is decided. If the appeal is fully sustained, you will, on receipt of a certified copy of the final decree, return the amount, taking the receipt of the proper party therefor. If the decree of the Circuit Court is sustained, you will issue official duplicate receipts as of the date of payment. If the decree is sustained in part and set aside as to some part of the taxes or charges, you will issue duplicate receipts for the amounts finally decreed and will return the balance of the payment, taking proper receipt therefor.

SALE OF LANDS FOUND IN THE TAX RECORD.

13. Sell First From Tax Record.—The description found in the Tax Record *and not withheld from sale as herein provided* are to be offered first, except where any description or any part thereof is held on the State Tax Land List, in which case the description so held *must* be sold from said State Tax Land List at the same time as from the Tax Record and to the same buyer.

14. Description to be Withheld.—To comply with the requirements indicated in the headings of columns 16 and 23, carefully examine the Tax Record and withhold from sale all descriptions thereon upon which the tax has been paid at your office. Enter in column 16 the amount paid, and if the amount paid is less than the amount stated in column 13, enter the difference in column 17 and give the date of payment in column 23. Also enter in column 17 the amount stated in columns 13 and 14 opposite descriptions that are withheld from sale for any reason other than that the taxes were paid to the County Treasurer before sale.

15. Payment Before Sale.—Section 106 provides that the taxes on any lands returned as delinquent may be paid to the County Treasurer or to the State Treasurer at any time prior to the day of sale and the right to pay the taxes or any part thereof on any parcel or on any part or interest in any parcel of land found in the Tax Record terminates on the day preceding the day fixed by Section 70 as the day of sale. You will not, therefore, accept payments tendered subsequent to April 30th. But partial payments either before or after decree has been entered and before sale do not stay proceedings (Sec. 106). You will sell all descriptions on which part of the taxes have been paid or that part of the description upon which the taxes and the accrued charges have not been fully paid, including (in the amount sold for) the proportionate interest, collection fee and expense. When payment of taxes or any part of or any undivided interest in any description is offered before the day of sale, the proper proportion of the entire amount decreed against the description as it appears in the Tax Record, may be accepted for any determinable part of the description advertised.

16. Descriptions Bid to Nothing.—Where a description is offered for sale and is bid to nothing, do not issue a certificate of sale, but treat it as a payment of the taxes and issue duplicate receipts, placing the amount decreed in column 16.

17. Previous Years.—When a parcel of land is advertised and is on the Tax Record for taxes of more than one year, do not sell for either year unless the bidder also purchases for the taxes of all years on said Tax Record.

18. Entry Showing Purchaser.—Section 70 provides that the word "State" shall be entered in the Tax Record opposite each parcel bid off in the name of the State. You will be careful to comply strictly with this requirement, and make the notation in column 20, opposite each description. Never fill column 20 opposite any description by "ditto," "do," or " ". But write the word "State" in all cases where the description is bid to the State, and the name of the purchaser, if sold to an individual, firm or corporation. (In column 21 you should place the complete address of the purchaser, giving street number of purchaser residing in cities.) These entires must be made on both copies of the Tax Record.

19. Sale to Firm or Corporation.—In all cases of sale to a firm enter the individual names of the persons constituting the firm and not the firm name. Where the sale is made to a corporation, add after the corporate name the abbreviation "inc."

20. Sales Set Aside.—When a sale is set aside for inadequacy of price (as provided for in Section 70), on receiving payment of the taxes with the interest and other charges (including the $1 per description for expenses,) you will issue duplicate receipts as in other cases of payment, stating on the face of the receipt that the payment is made in accordance with a decree of the court setting aside the sale for inadequacy of price. Enter in column 22.

21. Objections to Confirmation.—In case objections to the confirmation of sales are filed within the time limited in Section 70, note the fact in column 23, in the second copy of the Tax Record, so that the deed will not be issued until it is known that the objections are overruled and the sale confirmed. The entry in the original Tax Record should be made by the County Clerk, and the County Treasurer should confer with that officer relative to the record of such objections.

22. Sell as Decreed.—Sell each description as *decreed,* unless a part of the description is withheld from sale in accordance with a special decree of the Court or upon instructions from this Department or the taxes thereon are paid, in which case you will offer the balance.

23. No Division of Descriptions.—In no case can any description in column 2 be altered or amended. Sell the whole description offered to one individual, firm or corporation. If it cannot be sold, bid the whole description to the State offering it a second time on the day following the day on which it was first offered, or before the close of the sale.

24. Erase Nothing.—*Never rule out or erase any description or amount found* in columns 1 to 14 inclusive, as received from the Department or from the Court. Whenever any change is found necessary, indicate it by entries in columns 15 to 23, respectively, as may be applicable.

25. Entry of Interest Sold.—In all cases of sale, either to an individual bidder or to the State, enter in column 15 the interest sold, and enter the amount sold for in column 18 if sold to an individual, and in column 19 if bid to the State. If the entire interest offered is sold, enter the word "entire" in column 15; if an undivided interest (less than the interest offered) is sold, enter in column 15 the proper fraction denoting the undivided interest sold, preceding the fraction by the abbreviation "Und." If any part of the description has been paid or is withheld for any reason recognized herein, enter in column 15 the description of the remainder as sold and also enter in said column the interest sold in said remainder. The word "entire" entered in column 15 indicates that the entire interest offered has been sold, and is equally applicable to an undivided fractional interest if offered as such; but if any description is bid down and is finally struck off to an individual, firm or corporation for a less interest than was offered, then the entry in column 15 should show the fractional interest sold, and it must be stated to be an undivided interest. The omission to enter the interest sold would be just as fatal as to omit entry of the fact of sale.

26. Must Take From State Tax Land List.—Any person purchasing a description from the Tax Record, or any part thereof, which is for sale on the State Tax Land List, must be required to purchase the description as offered in said list, otherwise the description on the Tax Record must be bid to the State. This is imperative, and sales made in contravention thereof are void. See Section 70. When a description is purchased from the Tax Record and State list, the years sold fram the Record are not subject to redemption. See Cheever vs. Flint Land Company, Ltd., (Mich. Rpts., Vol. 134, p. 604.) Grand Haven Arbiter Unterstutzungs Verein vs. Soule, et al., (Mich, Rpts., Vol. 175, p. 210.

27. Head Notes in Tax Record.—For specific directions as to the manner of using the Tax Record, see also the notes at the head of the pages thereof, which you should carefully observe and strictly follow.

28. Deeds and Refundings.—All deeds for lands sold from the Tax Record or from the State Tax Land List are (if the land is not redeemed or the sale cancelled) to be issued by the Auditor General, and *all refunding* on redeemed or canceled sales *must be made by this Department*, except in the case of refunding money paid as a condition of appeal, in which case you will be governed by paragraph 12.

29. Make Separate Certificates for Each Description.—Do not include in any certificate of purchase several descriptions bid in by any one buyer, but make a separate certificate for each description; that is make a certificate for each description as it appears in the Tax Record, and *never include two descrip-*

tions in one certificate unless they were advertised together and included in one "aggregate" in column 13.

MANNER OF SALE.

30. Number Certificates.—Every certificate of sale must *bear the same numbers* as that by which the description is indicated in the Tax Record (or State Tax Land List) from which the sale is made.

31. Sale Must Be Competitive.—The practice of permitting any one to select descriptions before or during the sale and of treating such descriptions as sold to such person is distinctly contrary to the provisions of law. *No sale can be made from either the Tax Record or the State Tax Land List except as the description is offered for competition* when sold to the highest bidder if from State Tax Land List, or to the one offering to pay the taxes and charges and take the smallest undivided interest, if from the Tax Record.

32. Offer Each Parcel Separately.—*Each and every parcel* against which decree has been entered *must be separately exposed for sale,* unless paid for before sale or lawfully withheld. This requirement of the law cannot be satisfied by a general offer of the list. Each parcel must be separately exposed. The several descriptions should be offered in the order in which they appear in the Tax Record.

33. Sale of Least Interest.—Sale must be of the smallest undivided interest for which the description can be sold. Sale must not be made of the entire interest if any person will pay all taxes and charges and accept a certificate for an undivided interest less than the entire interest.

34. Sale of Undivided Interest.—If sale cannot be made of an interest less than the entire, then sale of the entire interest may be made, but only when the entire amount decreed cannot be realized for a sale of less than the entire interest in the parcel.

35. Sale of Undivided Interest.—If sale is made of an undivided interest, the interest sold must be definitely expressed. See paragraph 25.

36. Certificate.—In all cases where sale is made to an individual, firm or corporation, issue certificate on blank No. 500, giving the name of the purchaser entered in the Tax Record or State Tax Land List. See paragraph 19. If sale is of an interest less than the entire, the certificate must show the interest sold, preceding the description. See paragraph 25.

37. Reoffer.—If sale cannot be made when the parcel is first offered, such parcel must be reoffered on the succeeding day, or on some day subsequent thereto and before the close of the sale, and such reoffer should be in the order in which unsold parcels appear in the Tax Record. *Descriptions must not be bid to the State until they have been offered at least once after they were first offered;* and while a description may be reoffered on the first day of the sale, no description should be bid to the State until reoffered on the second day of the sale or later, and after each and every description on the list has been offered once.

38. Bid to State.—After all unsold descriptions have been reoffered, and *before close of the sale,* each successive description unsold must be bid to the State and entry made in columns 19 and 20 of the Tax Record.

39. Interest Bid to State.—*The interest bid to the State must be the entire interest.*

40. Form of Certificate.—Use no form of certificate of sale except those herein indicated, and only the edition of 1923.

41. Interest.—Interest in columns six, ten and twelve is computed for and including the month of April. In case payment is made to the County Treasurer before opening of sale on May 1st, additional interest must be computed and collected for the month of May. The additional interest should not be entered in column sixteen of the Tax Record. The full amount of interest should be accounted for on the duplicate tax receipt.

SALE OF STATE TAX LANDS.

42. State Tax Land List.—Any person purchasing a description from the Tax Record, which description, or any part thereof, is for sale upon the State tax land list, must be required to purchase the description as offered in said list, otherwise description must be bid to the State. This is imperative, and sales made in contravention thereof are void.

43. Make No Changes.—Do not rule out descriptions or make alterations or erasures on the State Tax Land List, except as advised by this Department, but indicate any corrections by entries in columns to the right of column 23, as may be proper.

44. Sale From State Tax Land List.—After sales from the Tax Record have been completed, including the sale of the same description from the State Tax Land List (if found thereon), then proceed to offer the remaining descriptions on the State Tax Land List, observing in particular in regard to all sales from said list that no bids can be accepted unless for the full amount due, and for the entire description or group of descriptions as appears on said list. Sale of undivided interest in lands on the State Tax Land List cannot be made, unless the description was so bid to the State and so appears in column 2 on the list from which the sale is made.

45. The Sale Must Be for the Full Amount.—No sale of any description on the State Tax Land List can be made for less than the entire taxes, interest and charges for which it is held on said list, and no *certificate of sale issued for any less than the entire amount* for which the description was held on said list *will be recognized.*

46. Sale to Highest Bidder.—If there is competition for any description or group of descriptions on the State Tax Land List, sale must be made to the highest bidder, but no bid can be accepted for less than the amount for which the description or group of descriptions is held on said list; and in such case sale can only be made for the same undivided interest for which the description was bid to the State.

47. Grouped Descriptions.—If several descriptions are grouped or braced together on State Tax Land List, no part of land so grouped can be sold without purchase of the entire group, nor for less than the aggregate amount for which all descriptions so grouped are held on said list; and sale of the entire description or group of descriptions must be made to one individual, firm or corporation. *Sec. 4198 Compiled Laws of 1915 is not applicable to sales made by County Treasurers.*

48. Must Take From Tax Record.—Carefully observe the provisions of Section 80 and make no sales from the State Tax Land List unless the purchaser takes the same description from the Tax Record where such description is on the Tax Record and is not withheld in accordance with instructions herein.

49. Descriptions Withheld.—Withhold from sale on this list any parcel that you find to have been redeemed or heretofore sold, unless such sale has been canceled or set aside; but if you have no record of cancellation and find on the State Tax Land List a description previously sold, you should write this Department for further advices before the day of sale. The fact of a description being withheld on the Tax Record is not a reason for withholding it from the sale on the State Tax Land List.

50. Directions on State Tax Land List.—Observe and follow the directions at the head of the State Tax Land List. Where a sale is made, or if a description is withheld, enter the amount in the column indicated.

51. Unsold Descriptions.—*Do not write "State" in column 28* opposite descriptions on the *State Tax Land List* which are unsold, but in such cases enter in column 26 the amount found in column 23.

52. Name of Purchaser.—Enter the name of the purchaser in column 28 opposite each description sold, and in column 29 enter the postoffice address. Never indicate a sale by ditto marks. See paragraphs 18 and 19.

53. Sales by Auditor General Suspended.—After April 14 no sales of State tax land will be made by this Department until after the close of the public sale, which you will make from the State Tax Land List No. 37.

54. Form of Certificate.—Make all certificates of sale of State tax lands on blank No. 502. All other forms are obsolete.

TIME AND MANNER OF REPORT OF SALE.

55. Report to Court.—Your attention is called to the provision of law relative to your report of the sale made from the Tax Record. See Section 70: "*As soon as possible after the conclusion of any sale, and within twenty days after the day named in the notice for the commencement thereof,* the County Treasurer shall make and file with the Clerk of Court a report of such sale, etc." Do not neglect to make this report. Such neglect will invalidate the sale. This report you will make in quadruplicate on Form No. 468, filing one with the County Clerk within twenty days after date of sale, affixing one to the original copy of the Tax Record, and *mailing one to this Department on the day your report is filed* with the Clerk of the Court; also fill out and sign the one attached to the second copy of Tax Record. To the copy of report sent to the Auditor General and to the copy attached to the second copy of Tax Record, have the County Clerk affix his certificate on blank No. 526 with seal of his office.

56. Report of the Auditor General.—"*As soon as sales are confirmed* the County Treasurer shall make a full report of the same to the Auditor General, etc." This report is to be made by sending to this Department the Duplicate Tax Record (never return the original) and the Duplicate State Tax Land List, after completing the entries in both volumes and signing the certificates affixed to the Duplicate Tax Record and to each copy of the State Tax Land List, and seeing that to both copies of the Tax Record are affixed certified copies of decree of sale and of any special decree in the matter.

57. Return of Duplicate State Tax Land List.—*Return the second copy of the State Tax Land List* as soon after the sale is concluded as you can complete your entries therein and compare them with the copy retained at your office. Do not wait for the confirmation of sales from the Tax Record before making your report of sale from the State Tax Land List. Date the certificate affixed to said list as directed thereon.

58. Return of Duplicate Tax Record.—Return the Duplicate Tax Record as soon after expiration of the twenty-eight days, as you can complete the entry of your report therein, first comparing all entries and papers therein with those in the original Tax Record retained at your office. DO NOT IN ANY CASE RETURN IT UNTIL AFTER EXPIRATION OF THE 28 DAYS, but return it as soon thereafter as is practicable. The certificate affixed thereto (form 470) should be dated on the day the Duplicate Tax Record is forwarded.

GENERAL DIRECTIONS.

59. Descriptions Erroneously Returned.—Withhold from sale all descriptions on either list upon which the taxes are known to you to have been paid to the Town Treasurer, twice assessed, not subject to taxation, or so incorrectly described as to have been subject to rejection when returned, placing the proper amount in the column headed "Amount withheld" (column 17 of the Tax Record, or column 27 of the State Tax Land List), and giving the reason in column 23 of the Tax Record or column 30 of the State Tax Land List.

60. Enter Full Names.—Give in your certificates of sale, and also enter in the Tax Record and the State Tax Land List, the *full* name and postoffice address of every individual, firm or corporation to whom you strike off a parcel of land, as the name in the deed when issued will be written as it appears in the certificate, which must agree in all respects with the entry in the State Tax Land List or Tax Record on file in your office, and of which your report to this Department *must be a full and exact copy.* Do not use initials in one place and the full name in another. A better rule is to use initials in no place where the full name is obtainable. See paragraph 19 as to names of members of firms etc,

61. Date of Sale.—The tax sale will be considered as taking place on the 1st day of May, and all certificates of sale must bear that date.

62. Destroy Old Blanks.—On receipt of this letter, destroy all of the old blank certificates of sale. *Use no other form of certificate of sale than those forwarded to you each year. No others will be recognized.*

63. Numbering Certificates.—Always number certificates of sale with the number found opposite the description in the Tax Record or State Tax Land List from which it is sold.

64. Unpaid Bids.—If the amount of any bid is not paid within twenty-four hours after it is made, cancel the sale and reoffer the description. *You may demand immediate payment,* but if you do not cancel the sale at the expiration of the time named it cannot thereafter be canceled because of non-payment. In such case you must be considered as having personally assumed the payment of the amount of the bid.

65. Inform Yourself.—If there are any questions relative to the conduct of the sale that do not appear to you clearly determined herein, any inquiry relative thereto addressed to this Department will receive prompt response.

66. Read Form 468.—Before the sale, read the form of report of sale carefully, and conduct the sale in such a manner that you can freely subscribe to the report to be made thereon. A supply of Blank No. 468 is sent you with the books.

67. Study Instructions.—A careful study of, and exact compliance with the instructions received and with every provision of law relative to the sale will be of mutual advantage.

68. Accounting for the State's Interest.—The amount due the State as proceeds of the sale is to be accounted for, as provided in Section 87 of the General Tax Law, as amended by Act No. 83 of 1899.

Respectfully,
ORAMEL B. FULLER,
Auditor General.

I hereby certify that the foregoing instructions
are in accordance with law.
ANDREW B. DOUGHERTY,
Attorney General.

Certificates of sale.

SEC. 71. (4068) At the sale aforesaid the respective county treasurers shall give to the purchasers, on the payment of the bids, a separate certificate in writing for each parcel, describing the lands purchased and the amount paid therefor, the name of the person to whom the same was issued, the number, date and amount of each certificate, and such certificate shall be regularly numbered and entered in the book kept for that purpose and designated as the tax record. Such certificate shall be in substantially the following form:

Form.

STATE OF MICHIGAN, } ss.
County of........... }

County Treasurer's Office........A. D. 18..

I, ..., county treasurer of the county of ...., in said State, do hereby certify that I did, at public auction, pursuant to notice given as by law required, on this.........day of...........A. D. 18..., sell to .... of ...., the lands herein described, for the sum of........dollars and .... cents said sum being the amount due and unpaid for taxes, interest and charges on said lands for the year of our Lord one thousand eight hundred and.........., that the said........... his heirs or assigns, will, if said sale stands confirmed, be entitled to a deed of conveyance of said lands, after the first

Tuesday in May in the year following the sale thereof as herein evidenced, unless sooner redeemed from such sale according to law. Said lands are described as follows, with the sum for which they were sold set opposite each description, that is to say: [Here insert description, and the amount bid therefor.]

....................,
County Treasurer.

History:—Am. 1895, p. 295, Act 154, Eff. Aug. 30;—Am. 1897, p. 289, Act 225, Imd. Eff. May 29;—C. L. '97, 3894.

Purchaser has no title until time for redemption has expired.—Cooley on taxation, 542. Certificate of tax purchase will cloud title if deed to be issued thereon would establish presumptive title adversely. Assignment of a certificate of tax purchase that is regular on its face is a valuable consideration.—Stoddard v. Prescott, 58 M. 542. Where record of sale and certificate issued conflict, record governs.—Kneeland v. Hull, 116 M. 55.

See Secs. 72, 115.

Auditor General to issue deeds.

Deeds entitled to record.

Deeds convey absolute title.

Writs of assistance.

Loss of certificate.

Refunding of redemption.

Penalty for false affidavit.

Sec. 72. (4069) On presentation of such certificate of sale to the Auditor General or his deputy, after the expiration of the time provided by law for the redemption of land sold as aforesaid, the Auditor General or his deputy shall execute and deliver to the purchaser, his heirs or assigns, a deed of the land therein described, unless the sale thereof shall have been redeemed or annulled as by law provided, which deed shall be entitled to record in the office of the register of deeds of the proper county, in the same manner and with like effect as other deeds duly witnessed, acknowledged and certified. Such deeds shall convey an absolute title to the land sold, and be conclusive evidence of title, in fee, in the grantee, subject, however, to all taxes assessed and levied on such lands subsequent to the taxes for which the same was bid off. The courts may, on application, put the purchaser in possession of the premises by writs of assistance. In the case of the loss of such certificate of sale, the purchaser or his legal representative or assignee, may file his affidavit of such loss, and that he was at the time of such loss the *bona fide* and legal holder thereof; and the Auditor General or his deputy shall thereupon execute, as aforesaid, a deed for the lands described in such certificate, if the same shall not have been redeemed, in the same manner as though it had been presented and surrendered; and if the same shall have been redeemed, on the presentation of such affidavit the money shall be paid to such person in the same manner as though the certificate of sale had been surrendered. Any person who shall make an affidavit as above required, or concerning any other matter which may be filed in the office of the Auditor General, shall be liable to the penalties of perjury for any false statement made in such affidavit with intent to defraud, upon conviction thereof, before a court having jurisdiction of the offense.

History:—C. L. '97, 3895.

A deed of quit claim and release of the form in common use shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.—11689 C. L. '15. Power of Auditor General to convey lands cannot be assumed from authority to sell for taxes, but must be expressly conferred by statute.—Sibley v. Smith, 2 M. 486.

Duty of grantor under Auditor General's deed to record his deed on request of grantee.—11764 C. L. '15.—Fee for recording.—14606 C. L. '15. Deputy Auditor General may sign tax deed in his own name when Auditor General is sick or absent, and the presumption in favor of official action lies in the absence of any direct showing that the Auditor General was absent or sick.—Westbrook v. Miller, 56 M. 148. Sec. 125 C. L. '15 and Drennan v. Herzog, 56 M. 467; Fells v. Barbour, 58 M. 49. A deed to a non-existent grantee is void.—Skinner v. Mt. Clemens, 54 M. 543. A deed need not recite proceedings prior to sale.—Sibley v. Smith, 2 M. 486. The omission to record a deed does not divest grantee's title.—Smith v. Fitting, 37 M. 148. Validity of tax deed does not depend upon its being recorded when no question of priority is raised.—Fells v. Barbour, 58 M. 49. Purchaser as between himself and the owner of other lands is bound at his peril to take notice of description in his own deed, and if he or his grantees make a mistake and go on the lands of others, they must bear the consequences.—King v. Potter, 18 M. 134.

Deeds from the State conveying tax homestead lands are not conclusive evidence of title in the grantee.—Morse v. Auditor General, 143 M. 610.

Where the words in deed adopted by Auditor General are those provided by 11750 C. L. '15; deed operates to convey title to the grantee.—Mann v. Carson, 120 M. 631; Dawson v. Peters, 119 M. 274. A tax title if valid destroys and cuts off all liens and incumbrances previously existing against the land even homestead and dower rights.—Robbins v. Barron, 32 M. 36. Purchasers of tax titles take no more than the deed gives them.—Reilly v. Blaser, 61 M. 399. Sale under law of 1893 if valid operates to vest in the purchaser an absolute title in fee whether that purchaser be the State or a private individual.—Connecticut Mutual Life Ins. Co. v. Wood, 115 M. 444. One cannot maintain an action to quiet his tax title or set up as a defense against the original owner until he has obtained his deed.—Boardman v. Boozwinkle, 121 M. 320.

It is settled that as between the State and the original owner the title to lands sold for non-payment of taxes becomes absolute in the State on a regular sale.—Hickey v. Rutledge, 136 M. 128.

Purchaser acquires an inchoate title subject to be defeated by redemption within the statutory period. In Stout v. Keyes, 2 Douglass 184 (a mortgage sale), held that when purchaser's title becomes absolute by the failure to redeem, it relates back to the time of the purchase and he may, therefore, after his title is thus perfected, maintain an action for injury done to the estate maliciously, and with knowledge of his rights, by the cutting and carrying away growing timber, after the purchase and before the expiration of the time for redemption, and that case is the proper common law remedy; but in Hess v. Griggs, 43 M. 397, it was held that a tax deed cannot relate back to the time of the sale for the purpose of making parties trespassers by reason of acts done on the lands before the deed was given. For some purposes such a deed may relate back to the time of the sale. In some cases the occupants of lands may be liable for waste under such circumstances.

The purchaser at delinquent sales is always chargeable with notice of outstanding taxes and tax liens of the State, and the purchaser is not relieved from such purchase by Sec. 72, which provides that the tax deed shall convey an absolute title to the land sold.—Auditor General v. Sherman, 136 M. 157.

A tax title relates back to the date of purchase for all purposes of effecting substantial justice but not otherwise.—Conn. Mutual Life Ins. Co. vs. Bulte, 45 M. 113. In an action of trespass to lands where the plaintiff is not in actual possession but bases his right upon a legal title and the constructive possession claimed to be drawn therefrom, evidence of tax titles held by third persons is admissible, such titles being prima facie paramount, and therefore unless overcome, defeating plaintiff's right of action.—Tolles v. Duncombe, 34 M. 101. A defendant in trespass who entered into possession under a tax deed and cleared up and fenced a portion of the land and planted a crop and was in actual possession, claiming under said deed, is in position to contest plaintiff's title, the deed though conceded to be void, giving him color of title to the whole premises.—Hecock v. Van Dusen, 80 M. 359. Claimant under a void tax title is not in a position to contest the title of one in possession of the land, having no interest in the equities between the parties to the action.—Loose v. Navarre, 95 M. 603.

The State does not guarantee tax titles except as statutes may provide for it, and in all other cases the purchaser must be content with such interest as he gets under his tax purchase. The State does not assume any responsibility for irregular conduct on the part of the local taxing officers; and the tax purchaser has the same means of ascertaining the legality of the tax that are possessed by any of the State authorities.—Rice v. Auditor General, 30 M. 123. A grantee is chargeable with notice of whatever appears in the chain of titles through which he claims.—Fitzhugh v. Barnard, 12 M. 104. Purchasers at public judicial sale or under a quit-claim deed usually buy at their own risk of the regularity of title.—McGoren v. Avery, 37 M. 120. Parties purchasing titles under judicial sales get only that which can be lawfully sold.—Walsh v. Varney, 38 M. 73.

Every sale of land under our tax system is the sale of the complete title, and if legal *all* prior titles are cut of by it.—Sinclair v. Learned, 51 M. 344; Westbrook v. Miller, 64 M. 132; Dumphey v. Hilton, 121 M. 315; Webster v. Auditor General, 121 M. 668; Schneider v. City of Detroit et al., 135 M. 570; Auditor General v. Sherman, 136 M. 157.

Act 229 P. A. 1881 as amended by Act 7, Public Acts 1882, does not repeal the provisions of the general tax law of 1869 as to the *prima facie* character of tax deeds. Statement in Hoffman v. Loud & Sons Lumber Co., 138 M. 5, that the title of the State under its sales prior to the passage of Act 7, P. A. 1882, when it was obtained, was *prima facie* valid, overruled. The statute refers to *deeds* and not to the state of the title when the deeds are issued.—Hoffman v. H. M. Loud & Sons Co. et al., 138 M. 10.

Statutory provision for quieting title 12302n C. L. '15, not repealed by general tax law.—Canal and Railway Co. v. Auditor General, 79 M. 351. In action to quiet title under tax deed, if defendant desires to impeach the prima facie title set up in the bill he must set forth specifically facts which if proved would defeat the tax sale.—Wagar v. Bowley, 104 M. 38. Where taxes are a valid claim and legally assessed, but there are defects in enforcement rendering the levy invalid, cloud can only be removed on condition of payment of tax.—Hamilton & Merryman Co. v. Township of L'Anse, 107 M. 419. Assignee of mortgage made by one in possession under tax deeds which are not attacked having foreclosed his mortgage has a perfect title, which cannot be detracted from by conveyance made after the tax sales by receiver to whom holder of original title conveyed the land under order of court before the tax sales.—Sherer v. Judson, 100 M. 539.

If the tax-payer is in possession and files a bill to remove a cloud from the title, the court may then compel him to do equity.—Conn. M. L. Ins. Co. v. Wood, 115 M. 444.

In Lillie v. Snow, 118 M. 611, held that one who acquired title by tax deed and obtained possession by paying tenant a consideration, had the right to file bill under 12451n C. L. '15 to quiet title.

Where a county treasurer, to whom money was sent with instructions to apply it in payment of taxes on certain lands, without stating the year's taxes to be paid, applied it to the purchase of the lands for the taxes of 1893, and took certificates in the name of a deceased owner, who devised the lands to plaintiff, and deeds were afterwards made to such deceased owner, such deeds were nullities, as running to a grantee not in existence, and did not operate to cut off defendant's tax title to the lands, based on a purchase for the taxes of 1892.—Paine v. Boynton, 124 M. 194.

DEED AS EVIDENCE OF TITLE: It is not within the province of the legislature to deny the right to defend title against a tax deed. The legislative intent was that the deed should be evidence of a title in fee simple after the right to give the deed was shown by proof of a valid decree.—Taylor v. Deveaux, 100 M. 581. See also McKinnon v. Meston, 104 M. 642. Provision making tax deed conclusive evidence of title does not render the act void.—Ball v. Ridge Copper Co., 118 M. 7.

Under Act 229, P. A. of 1897, title acquired by the purchase of a State tax deed does not become absolute until the period of redemption provided for in Act 229 has expired, even though the title had become absolute in the State before sale.—Adkin v. Pillen, 136 M. 682.

Tax deed is presumptively valid; its invalidity is not to be inferred from ambiguous facts or from a failure to find facts.—Stockle v. Silsbee, 41 M. 615. Sec. 72 does not purport to make the deed evidence that the sale was regular, nor does it purport to make the deed evidence, even prima facie, of the truth of the recitals contained therein. One relying upon such a deed must show a valid decree and the sale thereunder.—Dawson v. Peters, 119 M. 274. If the proceedings to foreclose tax liens show upon their face want of jurisdiction the deeds issued thereunder are void; but the jurisdiction cannot be attacked by evidence de hors the record.—Watts v. Bublitz, 99 M. 586; Vincent v. Evans, 165 M. 695.

Two tax deeds, one of which conveys to the grantee an undivided three-fourths of the land for delinquent taxes of a specified year, and the other an undivided one-third for delinquent taxes of the succeeding year, do not necessarily convey the entire title to the purchaser.—Laird v. Coach, 112 M. 628. Owner of land can maintain trover for timber by one claiming under void tax title where the possession was for the sole purpose of cutting the timber.—Moret v. Mason, 106 M. 340.

Further as to tax deed as evidence of title see Lacey v. Davis, 4 M. 140; Groesbeck v. Seeley, 13 M. 329; Wright v. Dunham, 13 M. 414; Blackwood v. Van Vliet, 30 M. 118. See notes to Sec. 77.

The title acquired from the State before the passage of Act 229 laws of 1897 was a title *in fee.*—Toolan v. Longyear, 144 M. 55.

Tax deeds executed by the State before the expiration of the period for redemption are void.—Haney v. Auditor General, 165 M. 681.

WRIT OF ASSISTANCE: A writ of assistance is the regular process for carrying out a decree of possession. Its object is to compel parties who are bound by a decree to give up the possession which they hold as mere tenants at sufferance and which by the decree and sale under it, they have become estopped from further asserting. A writ of assistance can never be proper where there is any real controversy as to the right of possession not precluded by the decree and sale.—Ramsdell v. Maxwell, 32 M. 285. A writ of assistance is proper only where a party concluded by the proceedings refuses to give up possession upon request, and it should not be granted without proper evidence of such refusal after the right of possession is established.—Howard v. Bond, 42 M. 131. Application for writ must be made to circuit court.—Ryerson v. Eldred, 18 M. 145.

Held error for the trial court in proceedings to set aside a tax decree instituted prior to the hearing of an application for writ of assistance to decide the case solely upon the pleadings and to refuse to allow petitioner to introduce testimony in support of the allegations in the writ of assistance.—Roberts v. Loxley, 121 M. 63. Purchaser of land under decree in tax proceedings cannot be compelled to resort to a court of law to gain possession and is entitled to introduce competent testimony as he desires in the case.—Beck v. Finn, 121 M. 21.

Where upon the hearing upon application for writ of assistance it is shown that the owner of the land has made an application to the county treasurer for a statement of all taxes against the land and had paid the amount reported by the treasurer as due for taxes, the appellate court will defer the issuance of the writ of assistance and give the owner an opportunity to make application to the Auditor General for a certificate of error, or to apply to the court if that right is not lost by the lapse of time.—Mann v. Carson, 120 M. 631.

Section not unconstitutional in that it deprives owner of right of trial by jury. The inquiries upon filing petition for writ of assistance are (1) whether the court had jurisdiction to render the decree; (2) whether all the steps required by the statute have been taken in making the sale, filing the report of sale, etc.; (3) whether the time for redemption has expired. The rules for the enforcement of a decree in a foreclosure proceeding are applicable to the enforcement of a decree in tax proceeding.—Ball v. Ridge Copper Co., 118 M. 7; Youngs v. Peters, 118 M. 45. Remedy against writ of assistance is by appeal.—Aldrich v. Wayne Circuit Judge, 111 M. 525.

An order of the circuit court denying a writ of assistance and holding a tax sale void in a proceeding in which the Auditor General was not a party, may be reviewed on a petition for mandamus to compel the Auditor General to refund the taxes held void under the decree.—Newton v. Powers, Auditor General, 131 M. 547.

On an application for a writ of assistance it was competent for the opposing party to show that the decree on which such application was based was void for want of jurisdiction.—Peters v. Youngs, 122 M. 484.

See Sec. 137.

The question of title cannot be tried through application for writ of assistance.—Flint Land Co. v. Terminal Raliway et al., 147 M. 62.

WHO CANNOT ACQUIRE TITLE: An agent who is authorized to sell property for the best price that can be obtained for it cannot become the purchaser either in his own name or that of another.—Ingerson v. Starkweather, Walker's Chan. Rep. 346. An agent for the sale of property under a contract with the owner acts in a fiduciary capacity and cannot acquire an adverse title by purchasing the premises at foreclosure sale in his own name.—Kimball v. Ranney, 122 M. 160. No one without express authority of law can become a purchaser of property which it is his duty to sell for the best price it will bring.—Ames v. Booming Co., 11 M. 139. The law will not permit an agent to act for himself and his principal in the same transaction, as to buy of himself as agent the property of his principal and the like. Public officers are agents within this rule.—People ex rel. Plugger v. Township Board of Overisel, 11 M. 222. See Walton v. Torrey, Harrington Chan. Rep. 259.

County treasurer conducting tax sale cannot be a purchaser. Sale conducted by clerk in office of county treasurer who represented the purchaser held void. County treasurer should not act for a purchaser because the two interests are conflicting.—Hall v. Collins, 117 M. 617. Neither the county treasurer nor his deputy can purchase at annual tax sale.—Wait v. Gardner, 123 M. 236. Agent for sale of property has no right to make himself the agent of others for the purchase of the property.—Moore v. Mandelbaum, 8 M. 433.

Purchaser, if owner of interest sold acquires no title.—Ligare v. Semple, 32 M. 437. One in possession of land claiming title can acquire no additional interest by suffering the land to be sold for taxes and becoming the purchaser if such taxes were a lien upon the land at the time of his taking possession; and it is immaterial whether the land is assessed to the occupant or otherwise.—Lacey v. Davis, 4 M. 140; Day v. Cole, 65 M. 129. But to preclude any person from making and relying upon a purchase of lands at tax sale there must be something in the circumstances of the case which imposes upon him a duty to the State to pay the tax or something which renders it inequitable as between himself and the holder of the existing title that he should make the purchase.—Blackwood v. Van Vliet, 30 M. 118. See also Gilman v. Riopelle, 18 M. 145.

Tenant cannot buy adverse title which existed when he received his lease and make it the basis of a suit in equity to quiet his title as against the landlord.—Ryerson v. Eldred, 18 M. 12. Tenant cannot buy tax title and set up against landlord's title.—Williams v. Towl, 65 M. 204. Life tenant cannot by neglecting to pay taxes and allowing lien to be foreclosed, cut off the title of the remainderman by purchasing at tax sale.—See Bowen v. Brogan, 119 M. 218.

A tenant cannot dispute his landlord's title as of the date of his lease, but he may show that it has been subsequently extinguished.—Sherman v. Fisher, 138 M. 391.

When the owner of a distinct tract of land neglects to pay his taxes thereon and the same is sold jointly with the land of others for the non-payment and he becomes the purchaser of the whole, the sale is void, the purchaser being in default in not paying his own tax.—Cooley v. Waterman, 16 M. 366. When there is a bona fide controversy respecting a title and one of the claimants is in possession he owes no duty to the other to keep the taxes paid, and may therefore strengthen his claim by procuring tax titles. But if a claimant cannot rely upon a title purchased by himself, he cannot make use of one obtained by another.—Jeffery v. Hursh, 45 M. 59. A tenant-in-common who has entered upon a portion of the premises is not barred from buying the remainder of the title.—Chamberlain v. Ahrens, 55 M. 111. One who has purchased lands from a claimant under tax deeds cannot defend a suit to foreclose a purchase money mortgage given by him upon the ground that it was his duty as an administrator in possession to discharge the taxes for the non-payment of which the deeds were executed and that therefore he acquired no title and the mortgage could convey none.—Judson v. Miller, 106 M. 140.

Taxes due upon mortgaged lands are as much a lien upon the mortgaged interest as upon the equity of redemption; and where one having second mortgage allows the land to be sold for taxes and obtains a tax deed he cannot use such deed adversely to the first mortgage. It inures to the protection and not to the destruction of the regular title. Mortgagee cannot use tax title adversely to regular title.—Horton v. Ingersoll, 13 M. 409. Purchase of tax bids operates as a payment of the taxes so far as a mortgagee or his assigns are concerned.—Fell v. Barbour, 58 M. 49. Adverse tax title cannot be pleaded as a defense to a purchase money mortgage where no claim under it has been made against the mortgagor.—Smith v. Fitting, 37 M. 148. When a mortgagee instead of making payment of the taxes purchases the land at tax sale the mortgagor may treat the purchase as a payment and compel the cancellation of the certificate or deed on refunding the amount paid with interest; but this is the right of the mortgagor only. Neither party to a mortgage can be suffered to buy at a tax sale against the will of the other and thereby cut off the other's interest; but either may bid if the other makes no objection.—Maxwell v. Willey, 46 M. 252. A tax title being purchased by mortgagee to protect the mortgage, it is proper in decree of foreclosure to provide that upon payment of the cost and interest the tax title be assigned to the mortgagor.—Baker v. Clark, 52 M. 22.

Mortgagee cannot suffer lands to be sold for taxes and get title under the sale. —Boardman v. Boozwinkle, 121 M. 320. Purchase of tax title by mortgagor held merely a payment of taxes he was in duty bound to pay.—McKisson v. Davenport, 83 M. 211. Where mortgagor conveys by voluntary conveyance a mortgage containing a covenant on the part of the mortgagor binding himself and his assigns to pay the taxes the grantee cannot after having asked and obtained an extension of a mortgage defeat such mortgage by the purchase of an outstanding tax title.—Brown v. Avery, 119 M. 384.

Vendee of land contract who has allowed the land to be sold for taxes which it was his duty to pay, cannot interpose such sales as defense against foreclosure.—Pringle v. Wagnoer, 110 M. 612. Where one enters under an arrangement with another who is in possession by virtue of a contract with the owner requiring him to pay all taxes, he can acquire no valid title to the premises as against such owner by virtue of any tax sales for taxes which under the contract it was the duty of his assignor to pay, but would hold any title thus acquired in trust for such owner.—Bertram v. Cook, 32 M. 518. The claimant of a pretended title which he had no right to retain or assert against another party is regarded in equity as holding in trust for the other party and as bound to release it to him on just terms.—Crooks v. Whitford, 40 M. 599.

A vendee in possession of land under a bill of sale of the timber cannot acquire an adverse title to the land and set it up against his vendor. Where a vendee in possession under a bill of sale acquires a title adverse to his vendor, such title is held in trust for the vendor and equity will compel the vendee to transfer such title to the vendor upon payment of such reasonable expenses as he may have paid in securing the title.—Patreski v. Minzgohr, 144 M. 356.

An attorney of an insurance company who purchased a tax title after foreclosing a mortgage in company's name and quit-claims to company is recognized as purchasing for himself; but his subsequent action was a recognition of his agency in making the purchase.—A tenant who has covenanted to pay the taxes cannot, having neglected to do so, acquire a tax title which shall shut off the title of his landlord. Neither shall the purchaser in possession under executory contract be allowed to cut off the rights of his vendor by like purchase, nor a mortgagor that of his mortgagee.—A second mortgagee is not bound to protect the first mortgage by payment of taxes or purchase at tax sale, but if he does so it is a protection ipso facto.—A mortgagee owes no duty to a subsequent mortgagee or to the owner to protect the party from tax liens; but all three owe a duty to the State to pay the taxes, and the State will sell the interest of all if none of them shall pay. As between themselves the primary duty is upon the mortgagor. But the purchase at tax sale in either case is only a payment of the tax.—Conn. Mutual Life Ins. Co. v. Bulte, 45 M. 113.

A tenant-in-common of lands can acquire no title to the interest of his cotenant by bidding in the lands at a sale of the whole for delinquent taxes.—Page v. Webster, 8 M. 263; Butler v. Porter, 13 M. 292. If such co-tenant procure another person to bid in the property for him, and to take the deed, this will give him no greater right. It is the duty of the tenant-in-common in possession of and using the whole estate, to keep down the taxes on the whole during his occupancy, and he cannot take advantage of his own violation of this duty to acquire the interest of his co-tenants in the land by purchase at a tax sale. Where a tenant-in-common in possession of and using the whole estate fails to pay the taxes, and a stranger purchases the same at a tax sale, in such a manner as to be himself entitled to assert his tax title against all the owners, the purchase of such tax title by such tenant only corrects the wrong he had before committed and operates as a payment of the tax. He cannot set up such tax title against his co-tenants. Whether a tenant-in-common not in possession, and hence not under obligation to pay the taxes of his co-tenant, can purchase of a stranger who without collusion with him has acquired it on his own account, a tax title based upon the default of his co-tenant, and set it up against such co-tenant—quere.—Dubois v. Campau, 24 M. 360. As to identification of the undivided interests purchased onus is on purchaser to show what it covers.—Butler v. Porter, 13 M. 292. A purchaser from one who holds only an undivided interest in patented lands, and who enters as a stranger to the rights of his co-tenants of the other undivided interests, is not estopped from setting up against them an adverse claim that originated before his purchase, such as a tax title that arose from his grantor's default. Estoppel from purchasing a tax title lies only against those who ought to have paid the tax or removed the burden.—Sands v. Davis, 40 M. 14.

Where a tract of land was bought in at a tax sale by a mortgagee, the title so acquired cannot be asserted as against the mortgagor, since such a purchase only amounted to a redemption from the sale, and cannot be considered as an independent title.—Porter et al. v. Corbin et al., 124 M. 201.

The original owner could not convey title to him because she had no title, it having been divested by the sale for taxes, whereby her interest vested in the State, absolutely after the expiration of the period for redemption.—Allen v. Cowley, 128 M. 530.

A widow who has conveyance from all but one of the heirs of her husband's estate and is in possession under such title and her statutory rights cannot acquire adverse title as to such heir by purchasing a tax title paid for by her husband's grantor, to protect his covenants of warranty pursuant to agreement made with the husband in his lifetime, nor can her grantee with knowledge of all the facts do so.—An heir cannot set up an adverse claim to land of which his father died seized, under a tax title purchased after his death and paid for by his grantor to protect the covenant of warranty pursuant to an agreement made with the father in his lifetime, such title belonging equitably to the estate.—Richards v. Richards, 75 M. 408. Second life-tenant cannot obtain a tax title during incumbency of first life-tenant which can be set up against remainder-man.—DeFreese v. Lake, 109 M. 415. Husband in joint tenancy with his wife cannot acquire a valid tax title against her.—Ward v. Nestell, 113 M. 185.

One holding contract cannot buy for title.—Curran v. Banks, 123 M. 594.

Where a mortgagee pays the taxes on property covered by the mortgage he has the right to include such amount with interest to his mortgage lien.—Union Trust Co. v. Electric Park Amusement Co., 168 M. 574.

Mortgagee has the right to purchase mortgage premises for taxes after foreclosure of the mortgage.—Ensley v. Coolbaugh, 160 M. 299.

Where purchase is made by the agent of the owner, purchaser obtains no title. —Backus v. Cowley, 162 M. 585; Cowley v. McGregor, 163 M. 517; Stansell v. American Radiator Co., 163 M. 528.

The purchaser of a tax title, who went into possession without serving the statutory notice on the owner, was entitled to purchase taxes for subsequent years, but is not entitled to compensation for improvements made while he was in wrongful possession.—Morrison v. Semer, 164 M. 208.

The purchase by mortgage amounts to a redemption.—Porter v. Corbin, 124 M. 261.

The grantee of a life estate cannot by the purchase of tax deeds acquire title adverse to the remainder-man.—Jeffers v. Sydnam, 129 M. 440.

A tenant in common did not acquire the title of his co-tenants by purchasing at a tax sale for village taxes, the purchase operating merely as a payment of taxes.—Sleight v. Roe, 125 M. 585.

Blackwood v. Van Vliet, 30 M. 118, held that owner cannot acquire title; nor can one holding contract.—Curran v. Banks, 123 M. 594.

Where a man mortgaged two pieces of land, one of which he afterward deeded to his wife, and both pieces were sold for taxes levied subsequent to the mortgage, and bought by the mortgagor in the name of his wife, the wife would not be permitted to set up the tax title thus acquired to defeat the mortgage, since such purchase amounts merely to a payment of the tax.—Chamberlain v. Forbes, 126 M. 86.

One who entered into possession of land as purchaser under a land contract secures an equitable title to the lands, the vendor holding the legal title in trust coupled with an interest by way of securing, and such vendee cannot, as purchaser of a tax title, acquire an interest adverse to the vendor in the contract.—Simon v. Rood et al., 129 M. 345.

It is inequitable for a husband to acquire title to the wife's land by obtaining tax title upon it, and such title is void as against the wife, and under circumstances may be void against the grantees and mortgagees of the wife.—Idem.

The general rule that one tenant in common cannot acquire an outstanding title adverse to his co-tenant, and that the purchase of such title inures to the benefit of all the co-tenants upon equitable distribution being made, is subject to an exception where the co-tenants have acquired their respective titles by different instruments and at different times and no relationship of trust or confidence exists between them, and where the outstanding title has not been created nor suffered to arise through the default of the purchasing co-tenants.—Boynton v. Veldman, 131 M. 555.

One who claims an interest in land acquires no additional title by purchasing the same for taxes.—Taylor v. Roniger, 147 M. 99.

RESULTING TRUST: In Linsley v. Sinclair, 24 M. 330, party purchasing tax title for another repudiated agency, asserted title in himself and conveyed the land. The court found that he procured title for the fraudulent purpose of appropriating it to his own use and held that the statute (see 11571 c. s. '15), providing that no trust shall result in favor of party furnishing consideration for a purchase in the name of another, does not apply to a conveyance obtained by fraud.—See also Russell v. Miller, 26 M. 1. Implied or resulting trusts may be established by proving the transaction out of which they result or are implied and such proof may be by parol testimony.—Ripley v. Seligman, 88 M. 177.

ATTORNMENT: A tenant in possession under one title can make no valid attornment to one not in privity with that title.—Fuller v. Sweet, 30 M. 236. A tenant in fact, cannot dispute the title under which he obtains possession.—Nims v. Sherman, 43 M. 45. A tenant is estopped from disputing his landlord's title during his occupancy under the lease and for any further time while he may hold over.—Bertram v. Cook, 44 M. 396. Attornment to third party in possession under writ of possession is not voluntary in such sense as to make it a wrong to original landlord.—Foss v. Van Driele, 47 M. 201. While tenant cannot during continuance of the tenancy dispute the title under which he obtained possession, he may show in summary proceedings to obtain possession of the leased premises that his landlord's title has been extinguished by a sale of the land for taxes and that he has attorned to the purchaser at such sale.—Jenkinson v. Winans, 109 M. 524. The fact that defendant in a bill to quiet title lost possession of the lands in suit through the action of complainant's agent in inducing defendant's tenant to surrender possession in order to enable complainant to maintain the bill under 12302n C. L. '15, which authorizes such a suit "against any person not in possession" is no defense where defendant's title has been cut off by a valid tax deed to complainant, the defendant having the right under the circumstances to attorn.—Lillie v. Snow, 118 M. 611.

See Secs. 77, 100, 101, 140-2.

Purchase of land by tenant of the original owner results only in payment of the taxes for the benefit of the owner.—Williams v. Fox, 152 M. 215.

No annulment after five years' possession.

Purchaser may recover for improvements.

Refunding on canceled sales.

Void taxes charged back.

Resale for valid taxes.

SEC. 73. (4070) No sale of any lands or deed made by the Auditor General under the provisions of this act shall be set aside or annulled by any court of this State after the purchaser, his heirs or assigns have been in actual and undisputed possession of such lands so sold or conveyed for a period of five years from the date of such purchase or deed. Whenever any sale made under this act is set aside by any court in less time than five years, the court shall determine and decree the value of improvements made by the purchaser, if he has been in possession, and give judgment therefor, and issue execution to collect the same of the claimant before putting him in possession. If a sale made under this act is set aside by any court or is canceled by the Auditor General as provided in this act, the Auditor General shall refund to the purchaser the amount paid at the time of the sale, with interest thereon at the rate of six per cent per annum from the time of the purchase to the time when said sale was set aside or canceled, out of the general fund of the State. In such case the Auditor General shall charge back to the county all taxes and the interest and charges thereon for all years for which it has been held that the taxes were invalid or the description erroneous, but for all years for which no invalidity has been found he shall proceed to enforce the collection of the taxes for all years refunded as herein provided, as in the case of taxes for which sale has not been made.

History:—Am. 1895, p. 296, Act 154, Eff. Aug. 30; C. L. '97, 3896; Am. 1899, p. 430, Act 262, Eff. Sept. 23.

One who did not raise any objections when proceedings were taken to establish a drain is estopped, after it is nearly completed, from objecting to such proceedings in an action to sell their land to pay the special drain taxes.—Auditor General v. Melze, 124 M. 285.

The tax law of 1889, Act No. 195, repealing the tax law of 1885, does not cut off the provision regarding the refunding of the purchase money in case the title is declared invalid.—Harding v. Auditor General, 136 M. 358.

Act 200 of the laws of 1891 made no provision for refunding when sales set aside. "In the absence of such provision for repayment the purchaser buys at his risk, and takes only such title as the State had.—Crane v. Reeder, 25 M. 320; Rice v. Auditor General, 30 M. 12."—Ball v. Auditor General, 133 M. 521.

Where relator filed a bill to annul a tax deed on various grounds which after final hearing was dismissed, he cannot thereafter maintain mandamus to compel the Auditor General to cancel the deed on the ground that the chancery court was not in session for five days subsequent to the day fixed for the hearing of the prior suit, and before the decree was rendered, since such objection might have been litigated in the chancery suit; and hence the decree dismissing the bill was res judicata against plaintiff's claim on such issue.—Sayers v. Auditor General, 124 M. 259.

A purchaser of land sold by the State for unpaid taxes acquires no interest in land exempt from taxation, included in the description of land subject to taxation.—Smith et al. v. Auditor General et al., 138 M. 582.

Auditor General cannot refund a tax if land was subject to assessment and actually assessed whether legally or illegally, and no attempt has been made to pay them.—Flint Land Co. v. Auditor General, 133 M. 542.

A tax-payer who neglects or refuses to pay any portion of his assessment and litigates all of it, will be required to pay such penalties and interest as are fixed by law upon such portion of the assessment as is held valid.—Powers et al. v. City of Detroit et al., 139 M. 30.

The power conferred on the Auditor General to cancel tax deeds does not extend to deeds issued by him to the State under the homestead provisions of the tax law.—Jackson, Lansing & Saginaw R. R. Co. v. Solomon Lumber Co., 146 M. 204.

LIMITATIONS: Party who is to have the benefit of limitations must have entered into possession under his tax- deed.—Gillman v. Riopelle, 18 M. 145; King v. Harrington, 18 M. 213. Possession must be continuous during full statutory period.—Yelverton v. Hilliard, 38 M. 355. Must appear that it was adverse to plaintiff.—Perkins v. Nugent, 45 M. 156. Statutes of limitations are statutes of repose and must not be defeated by undue strictness of construction.—Towle v. Wright, 37 M. 93. Action for possession of lands to which title is claimed under tax deed or entry thereupon limited to ten years after the right to make such entry or to bring such action shall have accrued.—12311n C. L. '15. See Perry v. Hepburne, 4 M. 165; Chamberlain v. Ahrens, 55 M. 111; Harrison v. Spencer, 110 M. 215; Whittaker v. Shooting Club, 102 M. 454. Statute protects parties entering under tax titles whether good or bad after ten years of occupancy.—Reilly v. Blaser, 61 M. 399. See also Hardy v. Powell, 40 M. 413; Whitford v. Crooks, 54 M. 261. Proof that a deceased person occupied lands several years and died in possession is presumptive evidence of seizure in favor of his heirs or of purchasers from his estate.—Hall v. Kellogg, 16 M. 135. After the holder of a tax title has recorded it and held possession for many years, the holder of the original title cannot question the tax title in collateral proceedings, as in an action of ejectment.—Blanchard v. Powers, 42 M. 619. As to recovery for improvements see notes to Sec. 104.

Where it is attempted to make a writ of mandamus play the part of an action at law against the State to recover a tax paid, the statute of limitations will apply as in an action of law, and the writ will not be granted where redress will ordinarily be barred by the statute of limitations.—McRae v. Auditor General, 146 M. 594. See also Wilkinson v. Auditor General, 147 M. 13.

The court holds section 73 is in effect a statute of limitation, and after the running of that statute, a possession under a sale upon a void decree protects the occupant.—Spaulding v. O'Connor, 119 M. 45; Merritt v. Westerman, 180 M. 149.

A possession of real estate for the period of limitations is a sufficient title to authorize the possessor to maintain an action of trespass thereon against an adverse claimant.—Hart v. Doyle, 128 M. 257.

St. Mary's Power Co. v. Chandler, 133 M. 470, reaffirms Spaulding v. O'Connor (119 M. 45), that this is a statute of limitation.

Possession for five years, even though under a void tax deed, gives the purchaser title by adverse possession.—Carmel v. Parr, 161 M. 429.

ACTION TO SET ASIDE: Trial of one's rights must precede dispossession.—McCombs v. Merryhew, 40 M. 721. As to laches and unreasonable delay to apply for relief by setting aside sale in chancery, see Goodwin v. Burns, 21 M. 211; Haff v. Jenny, 54 M. 511. In a contest between one who is seeking to make a gain and one who is struggling to avoid a loss equity will favor the latter.—Miller v. Aldrich, 31 M. 408. An order setting aside a forclosure sale and opening the case cannot be made without bringing in such third persons as have acquired rights under the sale.—Jewett v. Morris, 41 M. 689. Decree setting aside sale for jurisdictional defects should require petitioner to refund to the purchaser the amount paid by him with interest.—Jenkinson v. Auditor General, 104 M. 34. Where valid legislative act has determined the conditions on which rights shall vest or be forfeited and there has been no fraud in conducting the legal measures, no court can interpose conditions or qualifications in violation of the statute.—Cameron v. Adams, 31 M. 426.

One who as the owner of the government title neglects to pay the taxes which are returned delinquent for twelve years, is guilty of such laches as to bar his right to file bill to set aside a tax twelve years after a decree for the sale is entered.—Owens v. Auditor General, 147 M. 683.

Where an action to set aside on ground that tax was erroneously assessed as a part instead of the whole of a parcel of land, the collector's return introduced showed tax against a part of the land only, but it was consistent with the returns that the land might have been correctly assessed as a whole and a part cleared by payment before the return, the court in support of the deed would presume such payment.—Wright v. Dunham, 13 M. 414. Tax deed based upon assessment containing a fatally defective description of the property conveyed no title and owner was not estopped from denying the validity of the deed by having allowed sale to be made, and purchaser to make improvements without objection.—Petit v. F. & P. M. Ry. Co., 114 M. 362.

An irregularity in including exempt land belonging to another in a description of land liable to taxation will not avoid a decree for the sale of the land for unpaid taxes.—Smith et al. v. Auditor General et al., 138 M. 582.

An imperfect title can be disputed by those only who have a better one.—Covert v. Morrison, 49 M. 133. One who attacks a judicial sale as invalid after strangers have acquired rights under it must do so by some original proceeding in which an issue can be framed and tried in the ordinary way, and the persons concerned brought in as parties.—Cook v. Hall, 123 M. 378. Objections raised by petitioners in a proceeding to set aside a tax sale relative to the assessment and return of the taxes held to be foreclosed by the decree of sale and the provisions of Sec. 70.—Nester v. Church, 121 M. 81.

Tax sale held void on ground of fraud and conspiracy where county treasurer (who was the mortgagor) falsely represented to the mortgagee that taxes were paid and connived at sale of lands to third party for delinquent taxes.—Christian v. Soderberg, 18 M. 47.

While the holder of the tax title may rest upon his deed until the opposite party may introduce such evidence as in the absence of all counter-testimony will afford reasonable ground for presuming the proceeding anterior to the deed to be irregular, yet when this is shown the burden of proof is thrown upon the holder of the tax title. To overcome the presumption of regularity of the Auditor's deed plaintiff must show some substantial error affecting injuriously the former owner of the land.—Case v. Dean, 16 M. 12.

Where a petition for leave to file a bill of review to set aside a tax sale sets up a decree authorizing a sale of petitioner's land, which decree the petitioner claims is invalid, and the answer admits in effect that there are no taxes against the land which have not been extinguished, and no existing lien, the petitioner should be allowed to file a bill of review to set aside the decree.—Rumsey v. Auditor General, 138 M. 456.

In O'Connor v. Circuit Judge, Mich. Mandamus Cases, 423, order to show cause why mandamus should not issue to vacate an order granting leave to file a bill of review in 1897, in matter of the petition for the sale of 1894, denied.

When tax deeds are introduced the presumption is that the proceedings prior to issuing the tax deeds are regular, and the burden is on the plaintiff to show a fatal irregularity if any existed.—Anderson v. Besser, 131 M. 481.

An order of the circuit court denying a writ of assistance and holding a tax sale void in a proceeding in which the Auditor General was not a party, may be reviewed on a petition for mandamus to compel the Auditor General to refund the taxes held void under the decree.—Newton v. Powers, 131 M. 547.

A tax sale, though invalid, suspends the lien of the State, which only revives when the sale is set aside.—O'Connor v. Auditor General, 127 M. 553.

A decree for the sale of land for unpaid taxes cannot be attacked by showing an erroneous computation of interest on the amount due on the land.—Smith et al. v. Auditor General et al., 138 M. 582.

ADVERSE POSSESSION: If the tax purchaser obtains possession and holds it until protected by a limitation law, he then becomes safe, not because his tax title is any more regular, but because the holder of the better title has become incapable of asserting it. As an illegal tax title is a nullity it cannot of itself divest or affect the true title in any way and the true owner cannot be lawfully compelled to incur expense or take active measures to get rid of it unless he sees fit; but if he becomes ousted, whether by a pretended tax title holder or by any adverse claimant, he can only secure the enjoyment of his rights by active measures, and the party in possession may then rely on such possession until it is lawfully assailed by suit or otherwise within the period of limitation.—Groesbeck v. Seeley, 13 M. 329.

One who as owner has been in possession of land for statutory period claimed by the city for an unpaid tax, may maintain a bill to quiet title as against the city whether the claim of the city for the tax was known or not. Adverse possession in order to be invoked as a basis of title must necessarily be exclusive, and hostile to all claimants whether known or unknown.—Cass Farm Co., Ltd., v. City of Detroit et al., 139 M. 318.

Adverse possession under the statute must be open, notorious, continuous, exclusive, visible and distinct, as well as adverse. There must be an actual occupancy, as distinguished from constructive possession, of a portion or all of the premises claimed; not necessarily living thereon, for, if the premises are enclosed, and cultivated, this would be a sufficient actual occupancy; and if crops were continually grown thereon, this would be a visible occupancy; and though in the interim between harvesting and recropping no person was actually on the land, and nothing done thereon, yet, if such cropping continued from year to year this would be a continuous and notorious occupancy within the definition above given.—Cook v. Clinton, 64 M. 309; Yelverton v. Steele, 40 M. 538; Paldi v. Paldi, 95 M. 410. When one enters upon land under color of title and with claim of ownership, any acts of user which are continuous, and indicate unequivocally to the neighborhood in which the land is situated that it is appropriated exclusively to his individual use and ownership, are sufficient to render the possession adverse. It is not necessary that the occupation of land should be such that a mere stranger passing by the land would know that some one was asserting title to, and dominion over it, nor that the land be cleared or fence or any building be placed thereon, to render such occupation adverse.—Murray v. Hudson, 65 M. 670.

Adverse possession as against city; Schneider v. City of Detroit et al., 135 M. 570. In the same case it says, "The same rule has been applied in this State as against the State, viz., that the statute of limitations runs against the State upon lands bid off to the State at a tax sale.—Chamberlain v. Ahrens, 55 M. 111."

Payment of taxes is not necessarily such an assertion of ownership as to affect the adverse possession of another.—Cook v. Rounds, 60 M. 310. Payment of the taxes is not sufficient to establish title by adverse possession but is competent evidence to be considered in determining the question.—Whittaker v. Shooting Club, 102 M. 454. A tax deed which is insufficient in itself to pass title and assessment roll showing assessment to grantee are admissible to characterize the acts of possession on the part of the grantee and his successors.—Chabert v. Russell, 109 M. 571. As to adverse possession by grantee under a deed from the holder of void tax titles, see Judson v. Duffy, 93 M. 255.

A widow who was life tenant refused to pay taxes and her son bought the property at a tax sale. The widow went to live with the son who moved on the premises, the widow going with him. *Held,* that the son had no right of entry until the death of the widow and consequently on ejectment against him he could not claim title by adverse possession.—Sleight v. Roe, 125 M. 585.

Where it is sought to try title to a house claimed to be on the boundary line, and one of the parties is in possession, ejectment is the proper action where the question of improvements may be litigated under sections 13210-12n, C. L. —Cromwell v. Hughes, 144 M. 3.

Under 3 C. L. 1915, Sec. 13211n, permitting a defendant ousted in ejectment to recover for improvements provided he shall have been in actual occupancy for six years before the commencement of the action, the occupancy contemplated is such as would give title by adverse possession; hence, where a part of the period of defendant's occupancy was during the life of the life-tenant he was not entitled to recover for improvements against other remainder-men who were defendant co-tenants.—Sleight v. Roe, 125 M. 585.

Even though certificate of error has been issued by the Auditor General, "Defendant claims that a title thus acquired" (by adverse possession for more than five years) "by adverse possession cannot be cut off by the cancellation of the tax deed. There is much force in this contention." The facts, however, did not show this to be the case.—Nowlen v. Hall, 128 M. 274.

There can be no adverse possession against a remainder-man by the grantee of a life tenant during the lifetime of the tenant.—Jeffers v. Sydnam, 129 M. 440.

In an action of trespass quare clausum, the record shows that the question of plaintiff's actual possession was a disputed question of fact and was properly submitted to the jury.—Vetterly v. McNeal, 129 M. 507.

Secs. 115 and 116, tax law of 1885, fix the period at the expiration of which title vests by adverse possession, and is a statute of limitation not repealed by the tax law of 1889, and later tax laws.—St. Mary's Power Co. v. Chandler-Dunbar Water Power Co., 133 M. 470.

A finding that plaintiff claimed land under a certain conveyance and exercised acts of ownership and possession by herself, her husband, and son over fifteen years, is a sufficient finding that plaintiff acquired title by adverse possession.—Hart v. Doyle, 128 M. 257.

Where one claiming ownership by tax title has not entered into actual possession of the land under a void tax deed, the payment of taxes for subsequent years gave him no title by adverse possession under this section.—John Widdicomb Co., v. Card, 218 M. 72.

REFUNDING: Auditor General cannot refund any money upon the failure of tax titles except as some statute requires it. Act providing for refunding does not authorize such repayment in a case where the tax title has merely been introduced in evidence in an ejectment suit and held defective; but the judgment must be one acting directly upon the title.—Rice v. Auditor General, 30 M. 12. Further as to refunding see notes to sections relative to payment; also index of subjects in notes.

When sale is set aside it is the duty of the Auditor General to refund all money paid on the sale and to charge back the taxes set aside and include all other taxes in subsequent petition for decree. The lien of the state is not extinguished by payment as a condition of purchase in such case, but is only suspended.—Auditor General v. Patterson, 122 M. 39.

If a sale of taxes be void for any reason that does not affect the validity of the taxes, the lien remains and can be afterwards foreclosed by the state even though the State has refunded a purchaser the amount paid for such tax.—Auditor General v. Newman, 135 M. 288.

Act No. 200 of 1891 contains no provision for repayment to the tax purchaser at an annual tax sale where the tax deed has been held void, and the Auditor General has no power to make such repayment. In the absence of a provision for repayment the purchaser buys at his risk and takes only such title as the State has.—Ball v. Auditor General, 133 M. 521.

A decree setting aside a sale for delinquent taxes shall require the petitioner to refund to the purchaser the amount paid by him to the State for the lands.—Aztec Copper Co. v. Auditor General, 128 M. 615.

One entering into possession without giving notice under section 142 cannot recover in a proceeding to vacate the decree under which he purchased, either for improvements or purchase money.—Corrigan v. Davis, 125 M. 125; Powell v. Pierce, 168 M. 427.

See Secs. 75, 86, 104, 144.

Where the State deeds to a purchaser for unpaid taxes and at the time of sale the State holds no liens for prior years for delinquent taxes, it cannot after such sale, set aside prior sales, refund the amount paid, and assert the demand against such subsequent purchaser. In such case, if a sale is set aside and a refund made, the premises are discharged from the lien for those years.—Auditor General v. Clifford et al., 143 M. 626.

Where the purchaser of a void tax title did not have actual possession of the land, he did not acquire title even though the owner had actual knowledge of his claim.—Lasley v. Kniskern, 152 M. 244.

A tax title purchaser who enters into possession of land in direct violation of the law under which he purchased, is not entitled to compensation for improvements.—Cook Land Construction and Producing Co. v. McDonald, 155 M. 175.

Refunding.

Purchaser barred by five years' possession of owner.

SEC. 73a. (4071) The right to recover possession of any land, or to a refunding of the amount paid, by any person claiming through or under any deed executed by the Auditor General or by virtue of a certificate of purchase issued under the provisions of this act shall be forever barred by the actual, open and continuous possession of any person claiming such land adversely to such tax deed, or certificate of purchase, for the period of five years after the purchaser of such tax title, Money not to be refunded.

his heirs or assigns, is entitled to a deed thereof, or by failure of such tax title purchaser, his heirs or assigns to give the notice or notices required by this act for a reconveyance of the premises within the above specified period of five years. In case of such failure to give the required notice for reconveyance within the period of five years from the date such purchaser, his heirs or assigns shall become entitled to a tax deed to be issued by the Auditor General, the person or persons claiming title under tax deed or certificate of purchase, shall be forever barred from asserting such title or claiming a lien on the land by reason of such tax purchase; and such purchaser, his heirs or assigns shall not thereafter be entitled to a refunding of the amount paid as a condition of the purchase of such tax title by reason of any defect, irregularity, invalidity, or any cause whatever affecting the taxes or the sale of the lands for such tax lien.

History:—Added 1907, p. 63, Act 58, Eff. Sept. 28.

This section does not apply to purchase of tax titles prior to its enactment.—Holmes v. Soule, 180 M. 526; Jacques v. Bosman, 181 M. 495.

Prior to the enactment of this section there was no limit of time fixed in bringing an action on the part of the tax title purchaser to recover possession of lands purchased for taxes.—Wolverine Land Co. v. Jerome, 188 M. 66.

Redemption.

Redemption certificate.

Notice of redemption.

Idem.

Sec. 74. (4072) Any person owning any of the lands sold as aforesaid, or any interest therein, may, at any time before the first Tuesday in May in the year following such sale, redeem any parcel of such lands, or any part or interest in such lands, by showing to the satisfaction of the county treasurer or Auditor General that he owns only that part or interest in the same which he proposes to redeem, by paying to the county treasurer or Auditor General the amount of the sale of the parcel of land, or the portion thereof wished to be redeemed, and interest thereon from the date of such sale. Upon the payment of the redemption money and interest thereon at one per cent per month or fraction thereof to the county treasurer as aforesaid, he shall issue a redemption certificate in triplicate in such form as may be prescribed by the Auditor General, such triplicate certificates shall be countersigned by the county clerk, who shall make an entry of the number of such certificate, the amount for which it was given and the name and address of the person paying the same, one of such triplicate receipts shall be delivered to the person making such redemption payment, one filed in the office of the county treasurer, and one of such triplicate certificates shall be left with the county clerk to be immediately transmitted to the Auditor General. The county treasurer shall also make a minute of such redemption certificate in the tax record book kept in his office, with the name of the payee, the date and amount paid. All redemption certificates issued under the provisions of this section shall be consecutively numbered, beginning with number one on the first of each calendar year. Such certificate or triplicate, and the entry thereof by the clerk or the county treasurer, shall be evidence of such redemption payment in the courts of this State. In case any such lands are redeemed at the office of the Auditor General, a notice containing all the above facts shall be sent to the county treasurer of the proper county, who shall cause the proper entries to be made on the tax record of his county and in the office of the county clerk.

History:—Am. 1895, p. 296, Act 154, Eff. Aug. 30;—Am. 1897, p. 289, Act 225. Imd. Eff. May 29;—C. L. '97, 3897;—Am. 1899, p. 430, Act 262, Eff. Sept. 23;—Am. 1917, p. 799, Act 520, Eff. Aug. 10.

County treasurers are provided by the Auditor General with blank applications which all applying to them to redeem should be required to fill and sign. The form includes the statutory showing of interest. The same blank is furnished by the Auditor General to all who make application to redeem at his department.

It does not appear to be incumbent upon the officer to whom a tender for redemption is made to determine the title or interest of the party who seeks to redeem (legal titles are to be tried by law.—Hoffman v. Beard, 22 M. 59); but presumably when showing of interest is made in proper form such showing will be accepted as satisfactory unless the officer has proof that the applicant has not such interest as he claims he has.

Right of redemption exists only when permitted by statute. Courts cannot read into the law extensions of time, exceptions, etc.—Dumphy v. Hilton, 121 M. 315.

One having no legal or equitable interest in the premises cannot redeem.—Harwood v. Underwood, 28 M. 427. A volunteer cannot redeem.—Smith v. Austin, 9 M. 465, 11 M. 34. Sale of standing timber is sale of an interest in the land.—Johnson v. Moore, 28 M. 3; Russell v. Myers, 32 M. 522; Wetmore v. Neuberger, 44 M. 362; Wait v. Baldwin, 60 M. 622; Williams v. Hyde, 98 M. 152; but a parol license to cut timber is not.—Greeley v. Stilson, 27 M. 152. Equity of redemption is an interest in land.—Rawdon v. Dodge, 40 M. 697. A right of way is an interest.—D. H. & I. R. R. Co. v. Forbes, 30 M. 175. So is an easement.—Millard v. Reeves, 1 M. 110. See also Fletcher v. Township of Alcona, 72 M. 18. Owner of undivided interest may redeem.—People v. Treasurer of Detroit, 8 M. 14. Further as to who may redeem see Cooley on Taxation, 538-9, and cases cited at Sec. 8507 H. S. Redemption gives no new title. It simply relieves the land from the sale.—Cooley on Taxation, 543. In Johnson v. Knapp, 35 M. 307, it was suggested that a redemption when made is sufficient in all cases and by whomsoever made to save the title to the real owner whoever he may be. As to right of redemption see also Cargill v. Power, 1 M. 369.

Interest on redemption is rather a penalty or an exaction for the privilege of redeeming.—F. & P. M. R. R. Co. v. County Treasurer of Saginaw, 32 M. 260. Right to redeem strictly limited to the statutory period. Gantz v. Toles, 40 M. 725. Courts of equity cannot extend or enlarge time for redemption.—Cameron v. Adams, 31 M. 426. Statutory time for redemption is not affected by the mistaken date of expiry in certificate of sale.—Muirhead v. Sands, 111 M 487.

A party who through negligence or gross ignorance of the law fails to redeem within the time limited by statute has no claim to relief in equity.—Campau v. Godfrey, 18 M. 27. Owner and purchaser agreed upon amount for assignment of certificate, and former relying thereon, permitted time for redemption to expire, after which purchaser obtained deed and refused thereafter to accept tender of agreed amount: *Held,* to be fraud upon the owner and that he was entitled to decree against purchaser for conveyance.—Laing v. McKee, 13 M. 124.

In Fitzgerald v. Auditor General, Mich. Mandamus Cases 1034, mandamus to compel respondent to execute to relator deed of lands sold at tax sale, respondent having previously issued certificate of redemption, was denied. In Detroit F. & M. Ins. Co. v. Wood, 118 M. 31, owner remitted to county treasurer to redeem from sale for taxes of 1891 and 1892 and county treasurer issued certificates of redemption for both years, time for redemption from sale for tax of 1891 having expired. Auditor General accepted the duplicate for 1892 and declined to accept that for 1891. *Held,* when owner remits sum to be devoted to discharge of specified taxes it should all be applied as intended or no part of it accepted.

Money paid by the holder of a mortgage to redeem from tax sale does not constitute a lien apart from the mortgage but is discharged when the mortgage is satisfied.—Vincent v. Moore, 51 M. 618.

In case of incompetent person,—cannot redeem after period of redemption expires. The right of redemption from tax sales does not exist except as provided by statute.—Dumphey v. Hilton, 121 M. 315.

Deposit of money in postoffice not sufficient. "The person having the right to redeem must avail himself of that right during the time fixed by statute."—Paine v. Boynton, 124 M. 194. See also, Paine v. Land Comr., 66 M. 245.

Section 74 is not repealed by the provisions of sections 140 and 141, although the latter sections make section 74 inapplicable where the tax for which the land was sold has been paid by a purchaser of the title of the State.—Cheever v. Flint Land Co. Ltd., 134 M. 604.

A redemption from tax sale by the holder of an apparently valid title, but which was acquired by fraud, operates to restore the title to the original owner—Chandler v. Clark, 151 M. 159

Copy of decree of annulment.

SEC. 75. (4073) Whenever any court of competent jurisdiction shall by decree annul any certificate executed by the county treasurer aforesaid or any deed issued by the Auditor General, the clerk of such court shall, on the payment, by any party interested, of fifty cents, deliver to such person a certified copy of such judgment, decree, or order, which certified copy or such judgment, decree or order shall be a proper subject of record in the office of the register of deeds of the county in which the land is situated, and on recording the same, the register shall enter in the margin of the record of the tax deed affected by such decree or record, a brief statement of such judgment, decree or order, and shall also send notice of such decree or order to the office of the Auditor General.

Subject to record.

Notice of Auditor General.

History:—C. L. '97, (3898).

Tax held illegal, when.

SEC. 76. (4074) In any suit or proceeding to enforce or set aside any tax, such tax shall be held illegal only for one of the following reasons:

Unauthorized tax.

First, That no law authorizes such tax;

No jurisdiction.

Second, That the person or persons appointed to decide whether a tax shall be raised under a given law, have acted without jurisdiction, or have not imposed the tax in question;

Exempt, etc.

Third, That the person or property assessed was exempt from the taxation in question or was not legally assessed;

Tax paid.

Fourth, That the tax has been paid;

Fraudulent assessment.

Fifth, That the supervisor or board of review in assessing a person or property for taxation, or in the apportionment of the tax to the person or property in question acted fraudulently.

Other taxes sustained.

If any such illegality, omission or fraud affects the amount of one tax only, the tax shall be sustained so far as the same is legal and just.

History:—C. L. '97, 3899.

As to period within which a sale under a decree in chancery will be set aside.—Leonard v. Taylor, 12 M. 398.

Where objections to the sufficiency of proceedings in tax cases are not made in trial court, such objections will not be reviewed on appeal.—Auditor General v. Chase, 132 M. 630.

SUB. 3. The court has power to review a tax where it is charged that property not assessable was in fact assessed.—City of Detroit v. Donovan, 127 M. 604.

SUB. 4. A sale made after the tax has been paid is unauthorized and the deed on such sale conveys no estate or title whatever. One claiming to have paid the tax before sale is not precluded by the deed but may go behind it and show that fact.—Rowland v. Doty, Harrington's Chancery Reports 3.

SUB. 5. To justify court in setting aside assessment on ground of fraud and conspiracy the evidence must clearly establish the charge.—Pioneer Iron Co. v. Negaunee, 116 M. 430.

That valuation by assessing officers was too low or that property subject to assessment was not assessed is not of itself sufficient to allow tax-payer to escape taxation. It must appear that because of these things he is made to pay more than his portion of the taxes.—A court would not be warranted in holding an assessment invalid because the assessor or board of review had acted fraudulently, unless that fact was clearly established by the evidence.—Muskegon v. Boyce, 123 M. 535.

Where a fraud in tax roll was proven, it was not incumbent on the tax-payers resisting the sale of their lands for taxes levied under such assessment to furnish the court with data on which to estimate what would be a proper tax on their land, since that would require them to make a new tax roll, which they had no power to do.—Auditor General v. Pendill, 123 M. 521.

Where the trial court charged the jury in detail that fraud would vitiate the tax roll, and the jury found against the defendant on that issue, the assessment cannot be held invalid on appeal on that ground.—City of Muskegon v. Boyce, 123 M. 535.

After an assessment roll has been made, reviewed and completed, the supervisor fraudulently altered the valuation of certain lands by reducing the valuation fixed by the board of review. *Held*, that the entire tax was vitiated by the fraud and the fraudulent tax roll was absolutely void.—Auditor General v. Hughitt, 132 M. 311.

See Sec. 144.

The board of supervisors in making a computation of the personal assessments as required by Sec. 4031 C. L. by mistake used the assessments of personal property as they appeared on the original rolls in place of the equalized rolls. *Held:* That the assessments were void only to the extent to which the taxes were increased by the mistake.—Auditor General v. Griffin et al., 140 M. 426.

Competent evidence.

SEC. 77. (4075) In the prosecution or defense of any action or proceeding by any person holding or claiming land under any deed or deeds of lands purchased for delinquent taxes, the party so claiming, under and by virtue of such purchase, may show his title to such land and premises, whether the same was derived under one or more purchases, and may give in evidence any and all deeds of conveyance or other evidence of such purchases as aforesaid, which he may at any time have received, and may claim title under any or all of them.

History;—C. L. '97, 3900.

Where title rests upon the validity of tax deeds covering taxes for several years, briefs should be comprehensive, covering statutes, decisions etc., applicable to each point raised.—Hoffman v. Pack-Woods Co., 114 M. 1.

It would involve an absurdity to say that a subsequent title acquired at a tax sale and which breaks up and destroys all prior titles operates at the same time to strengthen such prior titles.—Lacey v. Davis, 4 M. 153. But purchaser may bid upon the same lands at a tax sale before the time of redemption under his former purchase has expired and have the benefit of such bid. —Tweed v. Metcalf, 4 M. 579.

A claim of title under a tax deed is of necessity hostile to the title of the claimant under the original title.—Sparrow v. Hovey, 44 M. 63.

A bill to remove a cloud from the title to lands where complainant's title is through a judicial sale cannot be sustained where the proceedings which were the basis of such sale and upon which the validity of complainant's title depends are shown to be void for jurisdictional defects.—Griswold v. Fuller, 33 M. 268. Purchase at a void tax sale can in no way effect the deed made pursuant to a sale previously made.—Jenison v. Conklin, 114 M. 9.

In an action of trespass for entering land, etc., tax deeds which the evidence shows are void may be treated as color of title; and if the defendant took possession under them they are admissible in evidence as tending to show what and how much lands he claims.—Hoffman v. Harrington, 28 M. 90. As to good faith of acts done under title based upon tax deeds, see Grant v. Smith, 26 M. 201; Winchester v. Craig, 33 M. 222.

OF TAX LANDS HELD BY THE STATE.

Sale of state tax lands.

SEC. 78. (4076) All lands heretofore or that may be hereafter bid off to the State for taxes, which have not been redeemed or otherwise disposed of, shall be offered for sale by the county treasurer at the regular annual tax sale provided to be held under the provisions of this act. The Auditor General shall furnish to each county treasurer in the month of April prior to the month of May in the year in which such tax sales are held, as provided in this act, a statement of all lands in his county that may have been bid in for the State, then remaining unredeemed or not otherwise discharged. Such statement shall exhibit the aggregate amount of all sums due on each description of land, including interest thereon at the rate of twelve per cent per annum from the first day of the month in which the land was bid in to the State until the first day of the month in which said annual tax sale is to be held, as heretofore provided for by this act.

Auditor General to make statement.

History:—Am. 1897, p. 290, Act 225, Imd. Eff. May 29;—C. L. '97, 3901;—Am. 1899, p. 431, Act 262, Eff. Sept. 23.

State tax land books are public records and subject to inspection by any citizen.—Aitcheson v. Huebner, 90 M. 643. Time to furnish lists is directory.—Garner v. Wallace, 118 M. 387.

Purchaser of State tax lands at annual tax sale is not required to pay all taxes then a lien as provided in Section 84 in order to entitle him to deed.—Berkey v. Burchard, 119 M. 105.

This statute was not enacted for the benefit of original owners.—Youngs v. Povey, 127 M. 297.

Purchase at county treasurer's sale from list and tax record not void if sale from record held invalid. The purchase stands good as to year or years sold from list.—Burns v. Ford, 124 M. 274.

Requirements and conditions of sale.

SEC. 79. (4077). At the time of holding the sale provided for in section seventy of this act, the county treasurer shall proceed to sell said lands last mentioned and to continue the same from day to day except Sundays, until the whole have been offered, and any person bidding on any of said lands shall be subject to the requirements, provisions and penalties of section seventy.

History:—Am. 1897, p. 290, Act 225, Imd. Eff. May 29;—C. L. '97, 3902;—Am. 1919, p. 52, Act 28, Eff. Aug. 14.

Publication of list of descriptions of State tax lands is not required.—Garner v. Wallace, 118 M. 387. Auction sale implies sale to the highest bidder and where notice was given of sale by auction it will be presumed that it was so made.—McCammon v. Railroad Co., 103 M. 104.

A publication once a week, occurring four times next previous to the first Tuesday, is valid, though less than a week transpired between the last publication and the day of sale, and less than four weeks between the first publication and the day of sale.—Monroe v. Winegar, 128 M. 309.

Land sold as State tax land and as delinquent land at the same sale is subject to redemption under Section 71 of the tax law. (Sec 4068 C. L. '15)—Monahan v. Auditor General, 136 M. 247; Vincent v. Evans, 165 M. 695. But not so after amendment to law by Act 34, laws 1907.

Purchaser must take entire state lien.

SEC. 80. (4078) In all cases where a description of land is offered as State or county tax land, and the same description or any part thereof shall be offered in the list of lands delinquent for taxes, as provided in this act, the county treasurer shall inform the person bidding for the same of that fact, and such person shall be required to purchase said description at the same time, and if he refuses so to do, the treasurer shall refuse his bid, and shall again offer it as if no bid had been made thereon.

History:—C. L. '97, 3903.

Purchasers at the county treasurer's sale must purchase from both the Tax Record and the State Tax Land List in order to make a valid purchase.—Grand Haven Arbiter Unterstutzungs Verein v. Soule, 175 M. 210.

For rules governing sale, see Sec. 70. See also Sec. 72.

Certificate of sale.

SEC. 81. (4079) The county treasurer shall, on payment of the purchase money of such sale, issue a certificate of sale to the purchaser in such form as the Auditor General shall prescribe and furnish, number the same and enter the name of the person or persons to whom the same was issued, with the number, date and amount thereof; in a book kept in his office for the purpose.

Record thereof.

History:—C. L. '97, 3904;—Am. 1907, p. 37. Act 34, Imd. Eff. April 3.

Purchaser has no right of entry on certificate before deed.—Busch v. Nester, 62 M. 381. But purchaser of unoccupied land is constructively in possession and may maintain trespass against one who without his authority having no color of title to the lands enters upon them, cuts and carries away standing timber.—Safford v. Bastow, 4 M. 406.

Certificates of sale must bear same number as that on State Tax Land List opposite the description.

See Sec. 115.

Land sold as State tax land and as delinquent land at the same sale is subject to redemption under Sec. 71 of the tax law, (Sec. 4068 C. L.)—Monohan v Auditor General, 136 M. 247; Vincent v. Evans, 165 M. 695, but not so since section amended in 1907.

Auditor General to issue deeds.
Proviso.

Sec. 82. (4080) The Auditor General or his deputy, on presentation and surrender of such certificate, shall issue to the purchaser, his heirs or assigns a deed of conveyance, except when it shall appear that the land has been redeemed or the taxes paid prior to date of sale thereof: *Provided*, That such deed shall have the same force and effect as is given by section seventy-two of this act.

History:—C. L. '97, 3905;—Am. 1907, p. 37, Act 34, Imd. Eff. April 3.
Sufficient that it be shown that deed was made in pursuance of law.—Garner v. Wallace, 118 M. 387.
A vendor acting in good faith is not responsible for the goodness of his title beyond the extent of his covenants.—Thorkildsen v. Carpenter, 120 M. 419.
See Secs. 73, 140-2.

Affidavit of loss of certificate.
Deed on Affidavit of loss.
Second deed to replace lost deed.
Fees.

Sec. 83. (4081) In case of the loss of such certificate of sale, the purchaser, or his legal representative or assigns, may file his affidavit, duly verified, of such loss and that he was, at the time of such loss, the *bona fide* and legal holder and owner thereof. The Auditor General shall thereupon execute, as aforesaid, a deed for the land described in said certificate, if the same shall not have been redeemed, in the same manner as though it had been presented and surrendered. The Auditor General shall execute a second deed of lands conveyed as herein provided, in all cases in which he shall be satisfied, by sufficient proof, that the original deed and record thereof has been lost or destroyed, which said deed shall declare upon its face that it is a second deed, and shall recite the loss or destruction of the former deed and its date, if possible. Such deed shall inure to the benefit of the grantee in the first deed, his heirs or assigns, as the case may be and shall have the same force and effect as said first deed. Before the execution of such deed, the party applying therefor shall pay to the Auditor General the sum of one dollar, which shall belong to the general fund of the State.

History:—C. L. '97, 3906.
When court may order new deed.—11767 C. L. '15. Second deed which does not recite upon its face the loss or destruction of former deed and its date, if possible, is no evidence of title.—Burroughs v. Goff, 64 M. 464. Applicant for second deed must make affidavit of loss of first deed and also furnish certificate of register of deeds that the deed has not been recorded.

Purchase of state tax land or state bids of Auditor General.
Conditions.
Proviso.

Sec. 84. (4082) Any person may purchase any state tax lands or any state bids, at any time except during the annual tax sale at the county treasurer's office and for the period of fifteen days prior thereto by paying therefor to the Auditor General the amount for which the same was bid off to the State, with interest on the same at the rate of one per cent per month or fraction thereof from the first day of the month in which such lands were bid off to the State, together with the other taxes which have been returned to the Auditor General and remain a lien on such lands at the time of the purchase so made, with the interest thereon at the rate provided in this act: *Provided,* That purchase may be made of any State bid within the period for redemption without payment of the taxes of subsequent years as a condition of purchase, in case the land is not held by the State as State tax land; but for all

Certificate and deed.

taxes remaining unpaid the land shall be liable to sale as provided by section eighty-five of this act. Upon making payment as above, such purchaser shall be entitled to and receive a certificate, and a deed conveying all the right, title and interest of the State to such tax lands, acquired or accrued by virtue of the original sale or sales to the State. All the provisions of law relative to deeds executed by the Auditor General on the surrender of certificates of sale made by the several county treasurers shall be applicable in making deeds for such purchases: *Provided,* That any person who would be entitled to a reconveyance under the provisions of section one hundred forty-one of this act, may purchase any State tax lands or any State bids, at any time except during the annual tax sale at the county treasurer's office, by paying to the Auditor General the amount as herein provided and filing with the Auditor General satisfactory proof of the right to such reconveyance.

History:—Am. 1895, p. 297, Act 154, Eff. Aug. 30;—C. L. '97, 3907;—Am. 1899, p. 431, Act 262, Eff. Sept. 23;—Am. 1915, p. 9, Act 4, Eff. Aug. 24.

Purchase under this section can be made of no officer other than the Auditor General, and if moneys are paid to the county treasurer that officer is for the purpose thus made the agent of the intended purchaser.—In Neeley v. Rood, 54 M. 134, it was held that moneys paid to county treasurer to be forwarded to the Auditor General were not received by the county treasurer in his official capacity, and that it is no part of his official duty to receive money to be paid to the Auditor General.

Application for mandamus to compel cancellation. Silverthorn bought Aug. 27, 1897, but money was not sufficient. He paid balance Oct. 25, 1897, and deed made as of Aug. 27. No intervening application between August and October and October 25, 1897, his money was sufficient. Mandamus denied without opinion May 18, 1903.—Hoffman v. Auditor General, 136 M. 689.

Purchase is complete when application is made to Auditor General and sufficient money paid. Issue of deed is a ministerial act, necessary to evidence the title which was in purchaser as soon as the statutory requirement as to application and payment were complied with.—Eldridge v. Richmond, 120 M. 586; Youngs v. Povey, 127 M. 297. It will be presumed, in the absence of evidence to the contrary, that payment was made at the date the application was received and not on the date the deed was issued.—Wilkin v. Keith, 121 M. 66. This section requires one purchasing the title of the State to pay all claims which the State holds against the lands for non-payment of taxes, including taxes returned as unpaid on which the time of redemption has not expired at the time the title is purchased.—Cheever v. Flint Land Co., Ltd., 134 M. 604; Hoffman v. Auditor General, 136 M. 689.

Where applicant has not paid with his application all the statute requires and owner causes the current taxes to be paid and tender to the Auditor General made to pay the State bids before the purchaser makes a new and perfect application, the owner is entitled to the deed.—Wilkin v. Keith, 121 M. 66. Where application was made with insufficient remittance and balance was not received until another tax (not included in the remittance) was payable as a condition of the purchase, deed issued was held void.—Purchaser not entitled to deeds to the amount of his remittance with an insufficient payment for all descriptions in his application in the order in which they appear.—Hubbard v. Auditor General, 120 M. 505. Grantee in tax deed which is void by reason of failure to pay all the statute requires may have refunding and on proper application may repurchase if no intervening rights have accrued.—Cockburn v. Auditor General, 120 M. 643; see also, Conley v. Auditor General, 123 M. 183; Ensley v. Coolbaugh, 160 M. 299.

Where state tax lands are deeded to one not the owner of the fee, and through an error in computation the State receives less than the price required by law, the deed is void, and does not vest the title of the State in the purchaser.—Hoffman v. Silverthorn, 147 M. 60.

It is the duty of the purchaser to ascertain the amount of all unpaid taxes (subject to payment as a condition of purchase) at the time of his application, and it is not sufficient compliance for him to forward to Auditor General with his application a gross amount sufficient to cover taxes that may be unpaid and leave it to that official to determine that all taxes due as a condition of purchase are included.—Hall v. Mann, 122 M. 13. In this case the purchaser claimed that his deed should be held valid on payment of a tax which was omitted, payment for which was not retained by the Auditor General, but which his remittance was sufficient in amount to cover.

Where the state deeds to a purchaser for unpaid taxes and at the time of sale the state holds no liens for prior years for delinquent taxes, it cannot, after such sale, set aside prior sales, refund the amount paid and assert the demand against such subsequent purchaser. In such case if a sale is set aside and a refund made the premises are discharged from the lien for those years.—Auditor General v. Clifford et al., 143 M. 626.

Mandamus will not lie to compel the Auditor General to cancel a sale for unpaid taxes unless the assessment is void or the sale unauthorized.—Kennedy v. Auditor General, 134 M. 534.

A sale under a regular decree cannot be vitiated because the purchaser is also required to pay the taxes apparently due the State under previous sale.—Monroe v. Winegar et al., 128 M. 309.

A sale of land by the State being valid as between the parties thereto, its regularity cannot be questioned by a trespasser.—Allen v. Cowley, 128 M. 530.

One who entered into possession of land as purchaser under a land contract, secures an equitable title to the lands, the vendor holding the legal title in trust coupled with an interest by way of security, and such vendee cannot, as purchaser of a tax title, acquire an interest adverse to the vendor in the contract.—Simon v. Rood et al., 129 M. 345.

It is inequitable for a husband to acquire title to the wife's land by obtaining tax title upon it, and such title is void as against the wife, and under circumstances may be void against the grantees and mortgagees of the wife.—Simon v. Rood et al., 129 M. 345.

Application made through a clerk in Auditor General's Department not in conflict with Section 490 C. L., making it unlawful for a clerk to purchase directly or indirectly.—Youngs v. Povey, 127 M. 297.

Whenever any person owning one or more government subdivisions of lands included in the assessment with other government subdivisions shall make or cause to be made affidavit setting forth that said person owns said subdivision, etc., and that affiant is desirous of paying all the taxes assessed against said land, upon tender by such person to the Auditor General of the proportionate amount of the taxes, interest and charges against said description, it shall be the duty of the Auditor General to issue to such person a deed of the description described in such affidavit.—4198 C. L. '15. All purchases under the foregoing provision must be made upon application to the Auditor General.

When lands subject to sale are applied for and payment tendered, Auditor General has no discretionary power to retain them from market for the accommodation of parties who had made application previously but were not ready to pay the money.—See People v. Pritchard, 17 M. 338, 341. Person applying to purchase and paying insufficient amount has no right to rely upon the verbal assurance of a clerk with whom he transacted the business that his payment would secure him the lands if on notice he should pay the balance. When two persons are contending for priority as applicants for the purchase of public lands, one has no right to object that the payment made by the other was in a draft, it having been received as money and it not appearing that it was of less value than currency.—See People v. Com. State Land Office, 19 M. 470. Where purchaser has accepted tender of purchase money and afterwards reoffers it, mandamus will not lie to compel the issuance of tax deeds if in the interim the land has been conveyed to other parties.—Aitcheson v. Huebner, 90 M. 634.

Failure of the Auditor General to figure interest properly held not to invalidate a tax sale to the owner of the original title.—Clippinger v. Auditor General, 135 M 1; but deed is void if issued to person not the owner of the fee.—Hoffman v. Silverthorn, 137 M. 60.

Court may at any time before enrollment of decree by default entertain the petition of owner of any land in Auditor General's petition to alter or vacate said decree, notwithstanding the purchase from the State by third party.—Benedict v. Auditor General, 104 M. 269. A party attacking a judicial sale as invalid after the rights of a third party have accrued, must do so by some original proceeding in which an issue can be formed and tried in a general way.—Crawford v. Tuller, 35 M. 57. Period of limitation against an action depends upon the act in force at the time cause of action accrued.—McKenzie v. A. P. Cook Co., 113 M. 453.

An assignee in bankruptcy who claims as a part of the bankrupt estate lands conveyed by the bankrupt prior to the commencement of the bankruptcy proceedings does not occupy a fiduciary relation to such grantee which makes it inequitable for him to claim the land as belonging to the estate or to purchase tax titles thereon granted on sales for delinquent taxes assessed after such assignment, such claims not relieving the grantee from the duty of paying said taxes.—Newaygo Mfg. Co. v. Stevens, 79 M. 398. A tax deed based upon distinct taxes of different years is valid if any one of the sales was valid whether the others were or not.—Hunt v. Chapin, 42 M. 24. See also, Peninsular Sav. Bank v. Ward, 118 M. 93.

In Smith v. Auditor General, Mich. Mandamus Caces 1030, relator had applied to purchase by mail, enclosing an insufficient amount. Being advised of the shortage, he remitted the balance, but in the meantime another applicant had paid the full amount and received deed. Relator petitioned for mandamus to compel respondent to issue deed to him. Order to show cause denied. In Widner v. Rayburn, Co. Treasurer, Mich. Mandamus Cases 1626, the facts were similar to the foregoing except that relator had made no tender nor payment before other parties had tendered payment. Order to show cause was issued but petition was withdrawn at the hearing.

In Osgood v. Circuit Judge, Mich. Mandamus Cases 370, relators had made application and payment for certain lands, and in proceedings instituted by mortgagee to set aside decree of sale relators filed petition to intervene and gave notice that their petition would be brought on for hearing on the day fixed in an order made requiring the Auditor General to show cause why the petition of the mortgagee should not be granted; but counsel for relators failed to appear in court on that day until after the court had made an order denying relators' leave to intervene. Mandamus to compel respondent to set aside this order denied.

The owner of lands which have been sold by the State for taxes cannot be heard to complain that the Auditor General accepted the personal check of the purchaser in payment of the lands.—Hubbard v. Auditor General, 120 M. 505.

Provision of this section not applicable to purchase at annual tax sale.—Berkey v. Burchard, 119 M. 105.

The business of dealing in tax titles is lawful and is recognized and encouraged by tax laws.—Aitcheson v. Huebner, 90 M. 634. Officers and clerks in Auditor General's Department and State Land Office prohibited from purchasing.—490-1 C. L. '15. Further as to who may not acquire title by purchase, see Sec. 72.

If officer issue an imperfect deed he may be compelled by mandamus to issue a good and completed one.—Am. and Eng. Ency. of Laws, Vol. 25, p. 677.

A tax deed issued by the Auditor General and not supported by a valid sale and decree is void.—Citizens Savings Bank v. Auditor General, 123 M. 511.

The grantee of a life estate cannot by the purchase of tax deeds acquire title adverse to the remainder-man.—Jeffers v. Sydnam, 129 M. 440.

Until the purchaser at a tax sale obtains a deed, no title passes to him. He cannot maintain an action to quiet his tax title or set it up as a defense against the original owner.—Boardman v. Boozewinkel, 121 M. 320.

Purchase by owner is in effect a payment or redemption of the land from taxes.—Hoffman v. Auditor General, 136 M. 689; Clippinger v. Auditor General, 135 M. 1.

A purchaser may gain possession by application for a writ of assistance, and he need not necessarily resort to an action at law.—Beck v. Finn, 122 M. 21.

Taxes are not paid and the lien thereof continues, though a check therefor is given, till presentation and payment of the check where persons apply to purchase State tax lands without paying the subsequent taxes thereon, one thereafter paying such taxes and making application to purchase has the right thereto.—Moore v. Auditor General, 122 M. 599.

The general rule that one tenant in common cannot acquire an outstanding title adverse to his co-tenant, and that the purchase of such title inures to the benefit of all the co-tenants upon equitable distribution being made, is subject to an exception where the co-tenants have acquired their respective titles by different instruments and at different times and no relationship of trust or confidence exists between them, and where the outstanding title has not been created nor suffered to arise through the default of the purchasing co-tenants.—Boynton v. Veldman, 131 M. 555.

No possessory rights to land are acquired by a purchaser at a tax sale until a deed issues and any agreement defendant made directly after his purchase could not bind co-tenants.—Dahlem v. Abbott et al., 146 M. 605.

A tenant in common did not acquire the title of his co-tenants by purchasing at a tax sale for village taxes, the purchase operating merely as a payment of taxes.—Sleight v. Roe, 125 M. 585.

Blackwood v. VanVliet, 30 M. 118, held that owner cannot acquire title; nor can one holding contract.—Curran v. Banks, 123 M. 594.

Mortgagee's purchase amounts to a redemption.—Porter v. Corbin, 124 M. 261.

Where a man mortgaged two pieces of land, one of which he afterwards deeded to his wife, and both pieces were sold for taxes levied subsequent to the mortgage, and bought by the mortgagor in the name of his wife, the wife would not be permitted to set up the tax title thus acquired to defeat the mortgage, since such purchase amounts merely to a payment of the tax.—Chamberlain v. Forbes, 126 M. 86.

Title does not pass to the purchaser at a tax sale until he obtains a deed. Absolute title by sale,—see under Sec. 72.—Sherman v. Fisher, 138 M. 391.

Titles purchased on behalf of the owner of the original title whether valid or invalid, are merged in the original title and not subject to cancelation.—Clippinger v. Auditor General, 135 M. 1.

A party cannot acquire title to land by purchase for a tax *any part of which it was his duty to pay.*—Horton v. Sanders, 13 M. 409.

It is the duty of the Auditor General to refuse to sell, either to the owner or a speculator, state tax lands, without requiring the purchaser to pay the full amount of all taxes shown to be delinquent by the records of the Auditor General's office, at the time of the purchase.—Haney v. Miller, 154 M. 337.

That an application to purchase state tax lands was received at the Auditor General's office, during the progress of a tax sale at the county treasurer's office, does not avoid the sale, which was consummated by the Auditor General after the conclusion of the public sale and the report thereof by the county treasurer, showing that no individual had purchased the land.—McDonald v. Miller, 162 M. 81.

The Auditor General has no authority to issue tax deeds covering premises that have been taken by eminent domain proceedings for the purpose of a public street, after the assessment of the tax but before the purchase from the State.—Graham v. City of Detroit, 174 M. 538.

See Secs. 72, 115, 139, 140-2.

Sale no bar to subsequent taxes.

SEC. 85. (4083) Neither the sale of State tax lands, nor the sale of any of the bids of the State for which the time of redemption has not expired, shall in anywise prejudice the right to enforce the collection of any tax subsequent to the year or years for which the same has been sold as aforesaid, and for the taxes and charges remaining unpaid for said subsequent year or years the Auditor General shall cause such lands to be offered in regular succession at the next ensuing annual sales for taxes, giving notice as required by law, unless previously redeemed or otherwise discharged.

History:—C. L. '97, 3908.
See Sec. 139.

Adverse claim.
Ejectment.
Evidence.
Proviso.

SEC. 86. (4084) In all cases where it shall become necessary, in the prosecution of an action of ejectment by any person holding an adverse claim to any lands hereafter bid in for the State as provided in this act, the Auditor General may be defendant, and in all cases in the prosecution or defense of an action of ejectment or trespass by any person holding or claiming land under any deed or deeds or other conveyance of land bid off or purchased for delinquent or unpaid taxes, the party reclaiming under and by virtue of such purchase for unpaid taxes may show his title to said land and premises, whether the same was derived under one or more purchases or sales for taxes or otherwise, and may give in evidence any and all deeds of conveyance or other legal evidence of such purchase as aforesaid, which he may have received on sales for taxes, and may claim title under any or all of them: *Provided,* In no case shall the State or county be required to refund any taxes or money by reason of defect in said taxes or sales, prior to the particular tax or deed which may be decreed valid.

History:—C. L. '97, 3909.

Action of ejectment.—13168n-12350n, 13228n C. L. '15. The statute places no limitation on actions of ejectment.—Harrison v. Spencer, 90 M. 586. One who paid for and procured a tax deed and caused it to be recorded is properly subject to an action of ejectment.—Tillotson v. Webber, 96 M. 144.

Quieting title.—12302n C. L. '15; 14465r C. L. '15. The State is bound by statutes of limitation and can give no title by selling after twenty years an old tax bid for premises that have meanwhile been held adversely long enough to bar ejectment from them.—Chamberlain v. Ahrens, 55 M. 111. See also State v. F. & P. M. R. R. Co., 89 M. 481. Purchasers take not more than the deed gives them. Plaintiff in ejectment having established title to undivided one-third, judgment in his favor for entire premises cannot be sustained.—Reilly v. Blaser, 61 M. 399.

A single judgment in ejectment is not necessarily final for any purpose.—Rice v. Auditor General, 30 M. 12. Ejectment for distinct parcels of land must be brought against each separate holding.—Walsh v. Varney, 38 M. 73. The holder of a tax title whose occupancy consists in making improvements and not in actual residence, can bring ejectment against one who has forcibly entered without right and by stealth.—Van Auken v. Monroe, 38 M. 725. In ejectment to obtain possession of land held under land contract the vendee is estopped from showing title which had accrued through his fault or neglect.—Hubbard v. Shepard, 117 M. 25.

A tax deed giving a prima facie title constitutes a perfect defense in an act of ejectment.—Conn. M. L. Ins. Co. v. Bulte, 45 M. 113. Title by deed is a question of fact.—Demill v. Moffat, 45 M. 410. Summary proceedings to recover possession of lands will not lie against holder of a tax title antedating a mortgage under foreclosure of which complainant claims. The holder of a tax title may fortify it by purchasing earlier tax titles and incumbrances.—Brown v. Martin, 49 M. 565. Cumulative titles.—See Lacey v. Davis, 4 M. 140.

In action of ejectment it is not error to admit in evidence a tax deed without first proving the regularity of the proceedings for the assessment of the taxes.—Dubois v. Campau, 24 M. 360. Where proceedings to foreclose a tax lien are regular, the decree is conclusive upon owner who is brought in by publication, and neither he or his grantee can question the validity of the tax in an action of ejectment brought against the grantee in the deed issued upon a sale made under said decree.—Cole v. Shelp, 98 M. 56.

Tax deed cannot be attacked collaterally on the ground that no certified copy of decree was attached to the Tax Record. Failure to so attach is not an irregularity which prejudices property rights.—A contention that the extension of the taxes opposite the lands of defendant was made after decree was signed cannot be raised in ejectment.—Gates v. Johnson, 121 M. 663. Tax deed cannot be attacked in a collateral proceeding on the ground that decree was void because when included in Auditor General's petition the land had been bid to the State and was thus held.—Peninsular Savings Bank v. Ward, 118 M. 93; Hoffman v. Pack, Woods & Co., 123 M. 74. The tax deed fair on its face cannot be attacked by parol in collateral proceedings.—Haven v. Owen, 121 M. 51.

The validity of a tax record will be presumed in a collateral proceeding, and it is not competent for the land owner in such proceeding to attempt to impeach it by the parol testimony of its lawful custodian.—Wilkin v. Keith, 121 M. 66.

Defendant in ejectment who fails to connect himself with the original title, etc., cannot question the title of the plaintiff under tax deeds.—Jennings v. Dockham, 99 M. 253.

The fact that right of way of railroad was included in assessment does not invalidate decree and sale.—Flint Land Company, Lt'd. v. Godkin et al., 136 M. 668.

Every sale of land under our tax system is a sale of the complete title and, if legal, all prior titles are cut off by it.—Sinclair v. Learned, 51 M. 335; Westbrook v. Miller, 64 M. 129. A tax title if valid destroys and cuts off all liens and incumbrances previously existing against the land, even homestead and dower rights.—A finding in an ejectment suit brought by one claiming under tax title that the lands were sold to the State for subsequent delinquent taxes and that a third person became the purchaser of the rights of the State therein, is a finding of an outstanding title in such third person prima facie valid and free from all prior liens.—Robbins v. Barron, 32 M. 36.

Former owner cannot defeat a tax title by showing an action of ejectment that he attempted to make payment. His remedy is Sec. 70 or Sec. 98.—Kneeland v. Wood, 117 M. 174.

When tax deeds are introduced the presumption is that the proceedings prior to issuing the tax deeds are regular, and the burden is on the plaintiff to show a fatal irregularity if any existed.—Anderson v. Besser, 131 M. 481.

Where the rights of third parties have intervened in tax sales, these rights cannot be litigated except in some original proceeding in which such third persons may be made parties and have an opportunity to answer and defend.—Bending v. Auditor General, 137 M. 500.

The right of parties who have purchased timber cut from lands sold for taxes cannot be litigated in a proceeding by the original land-owner to set aside a tax sale and deeds issued thereon.—Cook v. Hall et al., 123 M. 378.

Act 200, laws of 1891, contained no provision for refunding on a void sale, and the Auditor General has no power to make repayments except where authorized by statute.—Crane v. Reeder, 25 M. 320; Rice v. Auditor General, 25 M. 121; Ball v. Auditor General, 133 M. 521.

A plaintiff in ejectment can only recover on the title alleged in the declaration, and not on an after acquired title.—Nowlen v. Hall, 128 M. 274.

Adverse possession cannot be acquired against estates.—Merritt v. Westerman, 165 M. 535.

Adverse possession may be evidenced in an ejectment case in other ways than by residing on the premises.—Id.

Title by adverse possession is cut off by the sale to the State of the land for taxes.—Closser v. Remley, 195 M. 313.

A mortgage and prior tax deeds are cut off by the adverse possession of a subsequent tax title purchaser who has been in possession of the land for the statutory period.—McVicker v. Kneeland, 196 M. 472.

ACCOUNTS AND SETTLEMENT THEREOF.

Tax accounts.

Auditor General's quarterly statement.

Payments to county, etc.

Payment to state.

Proviso.

Sec. 87. (4085) The accounts between the State, county and each township shall be adjusted on the basis of crediting and paying to each the taxes collected by and for each with the interest thereon. The Auditor General shall, on the first day of January, April, July and October in each year, make a statement of account between the State and each county respectively, and render the same to the county treasurer of each county, and draw his warrant on the State Treasurer, payable to such county treasurer, for all moneys in the State Treasury collected for the county, township, school, highway or any other purposes for such county or township or district thereof, and transmit such warrant to the county treasurer, and notice to the county clerk thereof. At the same time the county treasurer shall pay to the State all moneys collected and due from their respective counties to the State, as shown by such account so rendered by the Auditor General to be due the State: *Provided,* That on January fifteenth, and each thirty days thereafter until the regular quarterly settlement for the quarter ending March thirty-first shall have been made each year, the county treasurer shall pay to the State all moneys coming into his hands from the collection of said State tax. The county treasurer of each county shall, on or before the first day of February, May, August and November in each year make out a detailed statement of the account between the county and the several townships or cities, which statement shall show the different funds to which the several debits and credits belong, and render the same to the township or city treasurer, and pay all moneys shown by said statement so rendered to the township or city to the proper receiving officer of the township or city, and notify the township or city clerk of the items and total amount thereof; also a description of the lands upon which such taxes were paid. The county clerk shall charge such amounts to the county treasurer, and the township or city clerks shall charge such amount to the township or city treasurers on the books of their respective offices: *Provided*, That in the county of Kent the county treasurer shall not be required to make a detailed statement.

Accounts between county and townships.

Duties of county and townships clerks.

Proviso.

History:—Am. 1895, p. 297, Act 154, Eff. Aug. 30;—Am. 1897, p. 282, Act 224, Imd. Eff. May 29;—C. L. '97, 3910;—Am. 1899, p. 123, Act 83, Imd. Eff. May 25.

When Auditor General pays county money to county treasurer the county must be regarded against all others than the treasurer as having received it. —Roscommon v. Midland Supervisors, 49 M. 454. Mandamus does not lie to compel the Auditor General to pay over to a county money which has been withheld from it in the periodical settlements under a mutual mistake of law. Where money has gone into the State treasury as part of a general balance rightfully received, and not as a separate and independent item wrongfully received, mandamus will not lie to require its repayment, nor can any suit be maintained for it unless voluntarily allowed within the authority of some proper officer. When a state sues it is limited in its recovery by any defenses that might be set up by individual plaintiffs. A State cannot be sued in its own courts without its own consent; nor can any suit that is really against the State be maintained against a State officer. Executive discretion cannot be judicially reviewed; and where the action of any officer to whom the State confides the auditing of claims against it is anything but ministerial it cannot be reviewed.—Ambler v. Auditor General, 38 M. 746.

In controversy between the State and a county growing out of tax proceedings the State, while represented by the Auditor General, is the real party in interest, and in the legal position taken speaks through the Attorney General and the county speaks by the board of supervisors. There should be no effort to obtain an unjust advantage by one over the other, and courts will not allow such a thing to be done, but will apply the rule of justice and equity in its broadest sense to the matters of difference between such parties. The proceeding by mandamus to which the parties are compelled to resort in such cases can only be taken in the court of last resort, to which the largest discretion is given; and the court may in its discretion refuse the writ unless the applicant consents to do equity.—Auditor General v. Saginaw Co. Supervisors, 62 M. 579. See Haines v. Supervisors of Co. of Saginaw, 87 M. 237; 99 M. 32. Counties not estopped by settlements from asking that illegal charges be stricken from account sought to be enforced by mandamus.—Auditor General v. Midland Supervisors, 84 M. 121. In mandamus proceeding to compel county to collect and pay indebtedness to State, county cannot set off moneys previously paid to the State in excess of amount legally demandable. Where the petition in such case states the account between the State and the county from a specified date, the county may contest the validity of any of the items embraced within the account, although a balance shown to be due to the State at a subsequent date was paid by the county.—County cannot refuse to pay over State tax on the ground that apportionment to it included territory detached and organized into another county, but must look to the new county for reimbursement. Pay of State troops in aid of civil authorities, 876n C L '15, a proper charge to the county. —Auditor General v. Bay Co. Supervisors, 106 M. 662.

County treasurer cannot refuse payment to State treasurer of State taxes collected on ground that county claims to have money due it from the State, and he will not be protected by action of board of supervisors directing nonpayment. County treasurer in collecting State tax acts for the State, and board of supervisors has no control over the money thus collected, and he cannot mingle the account of the State tax collected with the account between the county and the State.—Auditor General v. Tuscola Co. Treasurer, 73 M. 28. In petition for mandamus to compel levy of tax to pay amount due State, respondent claims amount alleged to be due county as an offset. Held in nature of assumpsit and an irregular form of action against the State which cannot be maintained.—Auditor General v. Grand Traverse Supervisors, 73 M. 182.

Held proper to charge counties interest upon taxes charged back to the county; upon items erroneously credited to county and afterwards charged back; upon moneys paid for the use of the county for the benefit of deaf, dumb or blind, and upon periodical balances due from the county.—Auditor General v. Shiawassee Supervisors, 74 M. 536. Auditor General cannot open account with township but only with county.—Mandamus will not lie to compel payment by Auditor General of redemption of township taxes when during the period covered the county has been indebted to the State.—Ottawa Supervisors v. Auditor General, 69 M. 1.

County treasurer has no right to retain out of money admittedly due a city a sum equal to the delinquent personal taxes due the county for which he has issued his warrant to the city treasurer to collect.—City of Muskegon v. Soderberg, 111 M. 559. Mandamus will not lie to compel payment by county to township of moneys claimed to be due for taxes received from Auditor General and others when the account between the county and township has not been stated and no settlement has been made showing the state of account; but in such case assumpsit could be maintained by township to ascertain the amount due.—Township of Cumming v. Ogemaw Co., 93 M. 314; see also, 100 M. 567. Failure of board of supervisors to have a deficiency occasioned by default of township treasurer added to the next year's tax does not affect the right of the county to charge the deficit to the township.—Oceana Co. v. Hart Township, 48 M. 319.

A township liable to the county for rejected taxes is also liable for the interest, citing Auditor General v. Shiawassee County Board of Supervisors, 74 M. 536.—Shiawessee County v. Township of Hazelton, 82 M. 440.

County liable for interest on balances.—Auditor General v. Ottawa Supervisors, 76 M. 295. Township, school district and road district taxes should be accounted for by the county to which the returns were made, and with the respective townships and districts for which they were levied.—Clare Co. v. Auditor General, 41 M. 182.

Where taxes have been rejected by the Auditor General the State is entitled to have the deficiency from such rejected taxes paid over at the next quarterly settlement the amount of State tax with interest and expenses.—Auditor General v. Bolt, 124 M. 185; Auditor General v. Monroe Co. Treas., 167 M. 453.

In mandamus proceedings to require an adjustment between the State and county upon the basis of a decree granted on the petition for the sale of tax lands: *Held,* that the court had jurisdiction of the subject matter and the decree entered concludes all parties to the proceeding.—Warren, County Treasurer v. Auditor General, 131 M. 263.

See Sec. 42.

Application to compel respondent to correct statement of account and pay over certain moneys.

Taxes were charged by the Auditor General to Sanilac county, and the board of supervisors of that county ordered the same to be reassessed upon the township of Marlette. The town declined to make the reassessment, and in the statement rendered by that county the amount stands charged against the township. Application denied November 19, 1891. McGrath's Mandamus Cases, p. 1385.—Marlette Township v. Smith, Co. Treas.

Report of tax payments and sales.

SEC. 88. (4086) The Auditor General shall, on the first Monday in each month, transmit to the treasurer of each county a list of the lands therein upon which the taxes have been paid to the State Treasurer, and also a list of all lands bid in to the State which have been sold during the preceding month, and upon receiving such lists the county treasurer shall make the proper entries showing such payment or sale. Where a sale has been made by the Auditor General the county treasurer shall note the fact upon the tax record.

County treasurer to note sales on tax record.

History:—C. L. '97, 3911.
See Sec. 84.

Interest and collection fee.

SEC. 89. (4087) To all taxes unpaid on the first day of March next after their assessment there shall be added interest at the rate of three-fourths of one per cent per month or fraction thereof, and to all taxes returned to the county treasurer there shall also be added a collection fee of four per cent. Such interest and collection fee shall be collected with such taxes and the interest and taxes to be paid to the State, county and township, in proportion to their several rights therein. The collection fee paid to the county treasurer shall belong to the general fund of the county, and that paid to the Auditor General shall belong to the general fund of the State. No other charges shall be added to any taxes voluntarily paid either to the township treasurer, the county treasurer or the State Treasurer, except the expense after it accrues under section fifty-nine of this act.

Part of public funds.

Accrued expense.

History:—C. L. '97, 3912;—Am. 1899, p. 432, Act 262, Eff. Sept. 23;—Am. 1921, p. 279, Act 129, Eff. Aug. 18.

Collection fee paid to county treasurer on sales or redemptions belongs to county.—Auditor General v. Bay Supervisors, 106 M. 662.

This section does not apply to taxes for years where sales are canceled—Schulte v. Auditor General, 131 M. 676.

Sec. 90. (4088) All compensation of officers in the assessment and collection of taxes in townships and in the return of delinquent taxes to the county treasurer, except fees collected by township treasurers on their tax rolls, shall be paid by the township. All compensation of county officers and expense incurred by them under the provisions of this act shall be paid by the county, and the compensation of all State officers and expenses by them incurred or paid, shall be paid by the State. Expenses made by the State officers shall be audited by the Auditor General and paid out of the general fund.

Compensation of officers.

History:—C. L. '97, 3913.

As to compensation of county officer whose annual salary has been fixed by board of supervisors see People v. Board of Auditors, 13 M. 233; Stetson v. Supervisors of Calhoun Co., 36 M. 10. Board of supervisors may include in compensation of county treasurer amount received for office charges on payment.—Munger v. Clerk of Board of Supervisors, 38 M. 307. Collection fee may be made part of compensation of county treasurer by board of supervisors.—People v. Reigel, 120 M. 78.,

The tax law prescribes the major part of county treasurer's duties and every change in or amendment to that law does not create an implied obligation to pay extra compensation for the new duties thereby imposed.—Backus v. County Treasurer, 99 M. 218. Compensation of county treasurer.—2369 C. L. '15; of prosecuting attorney.—2411 C. L. '15, see also 2514 C. L. '15; of county clerk.—2437 C. L. '15.

See Sec. 110.

Sec. 91. (4089) All losses that may be sustained by the default of any township officer in the discharge of any duty imposed by this act, shall be chargeable to such township. All losses by default of any county officer shall be chargeable to such county, and all losses by default of any State officer shall be chargeable to the State.

Losses by default in discharge of duty.

History:—C. L. '97, 3914.

Assessors will remember that any failure to perform the duties imposed upon them by the tax law will not be borne by the State but eventually, if not immediately, the loss falls upon their own township.

One item occasioning much loss is the return of land erroneously described, and in large part this expense would be avoided by the rejection of such descriptions by county treasurers when they receive and compare the township treasurer's return, as provided in Sec. 55.

Board of supervisors has no authority by resolution or otherwise to relieve the county treasurer or his bondsmen from liability under the law.—Op. Atty. Genl., 1902, p. 111.

Expense incurred by the State in attempting to collect taxes which, for some error of a county or township officer, cannot be collected, the county is liable to the State for the expenses and for interest on the rejected taxes.—Auditor General v. Bolt, 124 M. 185.

MISCELLANEOUS PROVISIONS.

Sec. 92. (4090) The Commissioner of the State Land Office shall, during the month of March in each year, furnish

Part paid state lands.

Licensed homestead lands.

Lists to be furnished to supervisors.

to the several county treasurers a list of all part paid State lands, and also of all licensed homestead lands that have been licensed for a term of five years and over, and upon which patents have not been issued, together with the date of each license and the name of the licensee, in their counties respectively, and such treasurers shall, on or before the tenth day of April next thereafter, cause to be delivered to the supervisor of each township affected thereby an accurate description of all such lands in his township, with the names of the persons holding the same.

History:—C. L. '97, 3915.

Commissioner to furnish county treasurers each year in time for assessment lists of swamp lands patented as provided in 734 C. L. '15; and such lands shall be subject to assessment and taxation as other assessable and taxable lands.—735 C. L. '15. County treasurer to furnish lists to supervisors. See also 569 C. L. '15.

County treasurer's bond.

Who to approve.

Conditions.

Auditor General may require new bond.

Cause for removal of county treasurer.

Sec. 93. (4091) Every county treasurer shall, before entering upon the duties of his office, execute to the Auditor General a bond, in such sum as the said Auditor General shall direct with three or more sureties, to be approved by the prosecuting attorney, judge of probate, and the county clerk of the proper county, or any two of them and the Auditor General, conditioned that such treasurer, his deputy, and all persons employed in his office, shall render a just and true account of all moneys received by him or them belonging to the State, and that he or they shall faithfully and promptly pay to the State Treasurer all such moneys received as aforesaid according to law, which bond shall be filed in the office of the Auditor General. Whenever the Auditor General shall deem proper he may require of the county treasurer a new bond with surety or sureties to be approved as aforesaid, and for such sum as he may deem necessary, and if the county treasurer from whom a new bond shall be so required shall not execute such a bond within ten days after he shall have received notice of such requirement, such failure may be deemed sufficient cause for the removal from office of such treasurer.

History:—C. L. '97, 3916.

Deputy county treasurer.—2363 C. L. '15. Fraud or embezzlement in office of county treasurer.—15308-10, 15378-80 C. L. '15. Sureties to justify.—195-7 C. L. '15. Sureties disqualified from approving bond.—Stevenson v. Bay City, 26 M. 44.

Delivery of bond to Auditor General is in law a part of its execution.—Endorsement of Deputy Auditor General has same force and validity as if signed by Auditor General himself and shows approval and acceptance by Auditor General. An obligation having been incurred under bond that had not been properly approved, but otherwise in compliance with requirements of the statute, neither the county treasurer nor his sureties can be heard to insist upon such approval for the purpose of defeating their liability.—People v. Johr, 22 M. 461.

See Sec. 94.

County treasurer's bond is cumulative security to the State for the proper performance of such duties to the State as are imposed upon him by the general tax law.—Attorney General v. Supervisors of St. Clair Co., 30 M. 388. County treasurers are responsible as debtors and not as bailees merely for the county funds to come into their hands and their liability is absolute and not affected by unavoidable loss or accident.—Perley v. Co. of Muskegon, 32 M. 132.

Where a bond is given to a public officer under statutory requirements the official obligee is invested with a legal interest, and is the proper plaintiff in a suit to enforce its provisions and penalties. Public officers have capacity to sue commensurate with their public trusts and duties and need no statutory authorization.—Berrien Co. Treasurer v. Bunbury, 45 M. 79.

The mere fact that some county records had been lost and vouchers destroyed, after settlements had been made with the county treasurer, does not prevent recovery on the treasurer's bond, where there is evidence showing errors in

the settlement. The treasurer and his bondsmen cannot defend upon the ground that he received township orders and due bills from his predecessor, where he entered them as cash upon his books.—Montmorency Co. v. Wiltse, 125 M. 47.
REPEALED BY ACT 263 OF 1921.

Employment of other persons to conduct sales, when.

Bond.

Conditions.

Compensation.

SEC. 94. (4092) In case the said county treasurer shall refuse or neglect to execute and file any such bond at the time and in the manner aforesaid, the Auditor General shall employ, in behalf of the State, some other person to conduct the sales of lands delinquent for taxes, and to receive payment therefor, under his direction, upon such person executing and filing with the said Auditor General, a similar bond with sureties as above mentioned, to be by him approved, conditioned for the faithful and prompt payment to the State Treasurer of all moneys which may come into his hands as the proceeds of such sales or otherwise, and a reasonable compensation for the services of such person shall be allowed and paid out of said proceeds.

History:—C. L. '97, 3917.
When bond is not properly approved it is the duty of the Auditor General to refuse it and to decline to allow the county treasurer to make the tax sale.—People v. Johr, 22 M. 461.
REPEALED BY ACT 263 OF 1921.

Authority to withhold from sale.

Taxes charged county and townships, when.

Change in boundaries.

SEC. 95. (4093) If the Auditor General shall discover before the sale of any lands, as aforesaid, that for any reason they should not be sold, he shall cause the same to be withheld from sale; and if the error originated with the township or county officers the amount of such taxes shall be charged against the county from which the same was returned; if such error was made by a township officer the amount thereof shall be charged by the county treasurer to the township in which such error occurred. If there has been a change in the boundaries of any county or town in which the lands are situated after the return of such taxes, such rejected taxes shall be charged to the county to which the lands belong at the time of such rejection.

History:—C. L. '97, 3918.
The county is responsible to the State for the regularity of the taxes returned, and in case any tax is found to be illegal and set aside by the proper State authority in the manner pointed out by law it is charged back to the county and the county is bound to make it good.—Auditor General v. Supervisors Monroe Co., 36 M. 71.
No outlawry as between State and county or between county and township. A township liable to the county for taxes rejected by the Auditor General is also liable for the interest legally chargeable to the county on such taxes.—Mason v. Hazelton Township, 82 M. 440.
Unauthorized charging back by clerk in Auditor General's department held not to be an abandonment of the petition for sale or of the right to a rehearing. —Auditor General v. Kanaar, 114 M. 602. Auditor General shall not cancel taxes assessed on railroad lands patented to land grant railroad companies unless upon decree of supreme court. 4186 C L '15.
Interest held proper upon taxes charged back; upon items erroneously credited and afterwards charged back; upon moneys paid for benefit of D. & D.; upon annual balances.—And may be compounded. Also Shiawassee v. Township, 82 M. 440, holding that township must pay county.—Auditor General v. Shiawassee, 74 M. 526.
The State is not authorized to charge back to the county because of injunction taxes returned delinquent until they have been rejected or held invalid by some competent authority; but where Auditor General has authority to reject them and does so for adequate causes the fact that he did not wait for a decree would not be important.—Auditor General v. Supervisors of Monroe Co., 36 M. 71. When exempt lands have been taxed Auditor General may reject taxes on his own motion, and may be compelled to do so by mandamus.—People ex rel. Throop v. Auditor General, 9 M. 134. The action of the Auditor General in charging back to a county certain taxes in the settlement with the county being

the exercise of an official discretion belonging to an executive department of the State government is not subject to judicial review and cannot therefore be examined upon certiorari.—Supervisors of Midland Co. v. Auditor General, 27 M. 165. Taxes rejected by adjudication of court for want of lawful equalization may be charged back and reassessed as well as those rejected by the Auditor General.—Auditor General v. Gurney, 109 M. 472.

Assessment of property as certain lots in "Newells E. and C. plat" held not void for indefinite description as the abbreviation was well known and the property could be definitely located on the plat.—Auditor General v. Fleming, 142 M. 12.

Provision contemplates rejection and annuling of the taxes, leaving them no longer in existence for any purpose. No taxes can be charged back without putting an end to them.—People ex rel. Throop v. Auditor General, 9 M. 134. But see Sec. 96 for provision for reassessing.

Auditor General properly rejected taxes which were not lawfully imposed.—Chippewa Supervisors v. Auditor General, 65 M. 408.

Where taxes have been rejected by the Auditor General the State is entitled to have deficiency from such rejected taxes paid over at the next quarterly settlement the amount of State tax with interest and expenses.—Auditor General v. Bolt, 124 M. 185.

See Secs. 73, 98.

Statement of rejected taxes.

Sec. 96. (4094) The Auditor General shall prepare and forward to the county treasurer a statement of such rejected taxes, and a description of the lands upon which the same were assessed; and such county treasurer shall lay the same before the board of supervisors at their next session thereafter, and if such taxes shall have been rejected or charged back by the Auditor General, except for the reason that such land was not subject to taxation at the time of assessment for such taxes, or that the taxes thereon had been paid, or that there had been a double assessment thereof, the board of supervisors shall cause the same to be reassessed upon the same land, and collected with the taxes of the then current year, and in the same manner. If such taxes cannot be properly reassessed upon the same lands, the board of supervisors shall cause the same to be reassessed upon the taxable property of the proper township.

Reassessment of rejected taxes.

History:—C. L. '97, 3919.

Change of title no bar to reassessment.—Cooley on Taxation 311. Taxes charged back are to be reassessed upon the same lands if rejected for mere informality or upon the whole township if absolutely illegal.—People ex rel. Throop v. Auditor General, 9 M. 134. Reassessments must be made in accordance with the law in force without reference to the law as it stood when the original assessment was made.—Brevoort v. Detroit, 24 M. 322. If tax is originally void by reason of having been levied for illegal purpose, it is not subject to reassessment; but a judicial decision against the first assessment; based on errors and defects merely is no bar to reassessment.—Cooley on Taxation 312. Reassessment is a continuing power, not exhausted until an assessment is made which can be enforced.—Brevoort v. Detroit, 24 M. 322.

In reassessing taxes upon the same land, the same details as to items of tax, etc., must be distinctly given as in the original assessment, and the reassessment must specify the year for which the taxes reassessed were first assessed; but no interest or other charges not included in the original assessment can be added in reassessment.

Reassessment for local improvement, see French v. Common Council of Lansing, 30 M. 379. In Brevoort v. Detroit, 24 M. 322, a legislative act provided for a new assessment in certain cases where former assessment had been vacated or held invalid. Held if the difficulty was that the sums assessed did not constitute any just or equitable charge for public purposes upon the property upon which it was sought to be imposed, it is quite clear that the legislature could not make it such a charge; but if the defect consisted of some irregularity of proceeding in consequence of which a just and equitable claim has failed to be legally imposed there can be no good reason why the legislature should not retrospectively supply the oversight or cure the irregularity. In Bryam v. Detroit, 50 M. 56. held that the legislature can authorize reassessment of paving tax to pay for work done in good faith where previous assessment therefor has been held void.

In Marlette Township v. Smith, Mich. Mandamus Cases 135, mandamus was denied to compel respondent (county treasurer) to pay over certain moneys claimed to be due the township, it appearing that certain taxes charged back by Auditor General had been ordered reassessed, the township declining to make the assessment and the amount remaining charged against the township.—See Auditor General v. Bolt, 124 M. 185.

A record of the board of supervisors in which a rejected drain tax appears as, "Ret. Drain, $1,078" without giving description or drainage district is not sufficient to authorize a reassessment of the tax.—Auditor General v. Tuttle, 146 M. 106.

As to reassessment of drain taxes charged to county see Mason v. New Haven Township, 82 M. 435; Mason v. Hazelton Township, 82 M. 440. Further as to reassessment see Tweed v. Metcalf, 4 M. 579.

Advertised list for tax of 1895 included reassessed 1893 taxes all under "1895 taxes," without specifying that a part was the reassessed tax. *Held*, that the taxes were in fact assessed in 1895.—Flint Land Co. v. Auditor General, 133 M. 512.

Board of supervisors may decide, alter or change any township.—Act 46, 1905.

Where an assessment described the property as the center 22 feet of a certain lot, and the tax was charged back to the county by the Auditor General because of indefiniteness of description, a reassessment pursuant to resolution of the board of supervisors on the same land, was invalid, though containing a definite description, since the description in the first assessment was too indefinite to be the basis of a tax.—Smith v. Auditor General, 125 M. 576.

Sec. 4094 C. L. authorizing the reassessment of lands rejected by the Auditor General for indefinite description, does not authorize boards of supervisors in reassessing taxes to correct descriptions absolutely void for indefiniteness, but only authorizes the board in such cases to reassess the taxes upon the taxable property of the township. The tax cannot be reassessed upon a different description than that contained in the original assessment roll.—Auditor General v. Fleming, 142 M. 12.

A report of the proper committee of a board of supervisors recommending the reassessment of lands, referring to them by schedule, and adopted by the board, constitutes a valid reassessment.—Auditor General v. Fleming, 142 M. 12.

Where a tax upon a parcel of land is reassessed upon a *part* of it the reassessment is void.—Scheber v. Koehler, 49 Wis. 291.

The reassessment is not to be considered a *new* tax.—Harwood v. Brookfield, 130 Mass. 561; Fairfield v. People, 94 Ill. 244.

From this it would *seem* as if reassessed taxes should be treated in making the assessment as of the year originally assessed.—Auditor General v. O'Connor, 83 M. 464.

A reassessment of a void tax without the authority of the board of supervisors is void.—Gage v. City of Saginaw, 128 M. 682.

The obeject of charging back taxes is to offset or discharge the credit given to the county for the taxes when first returned to the Auditor's office.—Throop v. Auditor General, 9 M. 134.

Failure to reassess, during the then current year, taxes which the Auditor General caused to be charged back to the county, and which are reassessed promptly after the county treasurer makes the statement to the board of supervisors showing the taxes rejected, is a valid reassessment; the omission of the treasurer to perform his duty by the making of the report at the next session of the board is directory only.—Auditor General v. Rutter, 161 M. 470.

Detached lands.

SEC. 97. (4095) It shall be the duty of the board of supervisors to furnish to the Auditor General a list of all taxes which shall have been rejected or charged back to their county by him upon lands which shall have been detached from such county subsequent to the time when such taxes were assessed, and the Auditor General shall thereupon credit to such county the amount which he may have so far charged back, and charge the same to the county in which such lands may then be situated: *Provided*, Such taxes shall not have been previously paid or reassessed.

Proviso.

History:—C. L. '97, 3920.

Errors discovered before transfer.

SEC. 98. (4096) Whenever any lands returned to the office of the Auditor General under the provisions of any of the general tax laws, or to the county treasurer during the life of the tax law of eighteen hundred ninety-one, shall have been sold on account of non-payment of taxes thereon, if the Auditor General shall discover before a conveyance of said lands is executed and delivered:

If not subject to taxation.

First, That the land so sold was not subject to taxation at the date of the assessment of the taxes for which it was sold; or

If taxes paid.

Second, That the taxes had been paid to the proper officer within the time limited by law for the payment or redemption thereof; or

Illegal sales.

Third, That such sale was in contravention of any of the provisions of this act; or

If certificate of "no taxes."

Fourth, That a certificate that no taxes were charged against said lands has been given by the proper officer within the time limited by law for the payment or redemption thereof.

Conveyance withheld.
Proviso.
Certificate of error.
Refunding on release.
Proviso.

The Auditor General shall withhold a conveyance of such lands and shall, on demand, cause the money paid therefor to be refunded to the purchaser with interest thereon at six per cent per annum: *Provided,* That in the last mentioned case the person in whose behalf such certificate was given shall, at the time of presenting such certificate to the Auditor General, pay to the State Treasurer, on the statement of the Auditor General, all taxes and charges due to the State upon such lands at the time such certificate was issued. If the discovery is not made until after the conveyance has been executed and delivered, a certificate of error may be issued in proper form for record; and the deed, if not recorded shall be surrendered when the purchase money is refunded. If the deed has been recorded, the money shall be refunded on a recorded release from the holder of the tax deed: *Provided further,* That the conveyance of such lands shall not be withheld or a certificate of error issued after a period of five years from the date of sale thereof, except for the reasons, first, that the land described therein was not subject to taxation at the time of the assessment of the taxes for which it was sold; or, second, that the taxes had been paid to the proper officer within the time limited by law for the payment or redemption thereof.

History:—Am. 1895, p. 298, Act 154, Eff. Aug. 30;—C. L. '97, 3921;—Am. 1899, p. 432, Act 262, Eff. Sept. 23;—Am. 1903, p. 106, Act 80, Eff. Sept. 17.

In People ex rel. Sweet v. Adam, Auditor General, 3 M. 427, the court held that the act of 1843, containing the same provisions as this section, conferred upon the Auditor General judicial powers into the proper exercise of which the court cannot inquire on motion for mandamus, and that if the relator was dissatisfied his remedy was certiorari.

Mandamus will not lie to compel the Auditor General to cancel a sale for unpaid taxes unless the assessment is void or the sale unauthorized.—Kennedy v. Auditor General, 134 M. 534.

Mandamus is the proper remedy to compel Auditor General to issue a certificate of error and to determine the validity of his reasons for refusal.—Hubbard v. Auditor General, 120 M. 505. Mandamus will not lie to compel a State officer to perform any but an unquestionable and legally defined duty.—Bresler v. Butler, 60 M. 40.

That mandamus is the proper remedy to compel the Auditor General to issue a certificate of error.—Hoffman v. Auditor General, 136 M. 689.

Mandamus will not be issued to compel the Auditor General to cancel a tax sale, where the same question has been litigated and determined by a decree of the court in a former case.—Haney v. Auditor General, 165 M. 681.

The Auditor General on application for a certificate of error, exercises a ministerial rather than a judicial power; and hence his act does not contravene Const. Art. 6, Sec. 1, vesting judicial powers in the courts.—Northrup v. Maneka, 126 M. 550.

When the Auditor General issues a certificate cancelling a prior tax deed, the deed is insufficient to establish title in the purchaser.—Nowlen v. Hall, 128 M. 274.

Sale held not subject to cancellation for insufficiency of interest where subsequent year had been sold under valid proceedings.—Horton v. Helmholtz, 149 M. 227.

The power conferred upon the Auditor General by this section to cancel tax deeds, does not apply to deeds issued under the homestead provisions of the tax law.—Commissioner of State Land Office v. Auditor General, 131 M. 147, (Sec. 127).

The power conferred on the Auditor General to cancel tax deeds does not extend to deeds issued by him to the State under the homestead provisions of the tax law.—Jackson, Lansing & Saginaw R. R. Co. v. Solomon Lumber Co., 146 M. 204.

Where relator filed a bill to annul a tax deed on various grounds which after final hearing was dismissed, he cannot thereafter maintain mandamus to compel the Auditor General to cancel the deed on the ground that the chancery court was not in session for five days subsequent to the day fixed for the hearing of the prior suit, and before the decree was rendered, since such objection might have been litigated in the chancery suit; and hence the decree dismissing the bill was *res judicata* against plaintiff's on such issue.—Sayers v. Auditor General, 124 M. 259.

An irregularity in failing to include a strip of land in a description is not jurisdictional and where the owner permits the case to proceed to a decree the question whether the land is properly assessed and whether proper steps have been taken to charge the land after assessment becomes *res adjudicata*.—Kehı v. Auditor General, 138 M. 586.

Auditor General has full authority to cancel under Subs. 1, 2, and 4.—Northrup v. Maneka, 126 M. 550; Nowlen v. Hall, 128 M. 274; Mann v. Carson, 120 M. 631; Young v. Auditor General, 118 M. 56; Thomas v. Auditor General, 120 M. 535.

The Auditor General has power to cancel the deed after the expiration of six months.—Hayward v. Auditor General, 147 M. 591.

A certificate of error, if a judicial act, is one of a limited tribunal whose jurisdiction under ordinary rules should appear upon the face of its proceedings. A certificate of error which shows affirmatively that it was issued upon a supposed error or defect, which is clearly not such as a matter of law, is void and can be attacked in a collateral proceeding.—Vetterly v. McNeal, 129 M. 507.

The failure to except the right of way could not be set up in a collateral proceeding for irregularities in the proceedings, the decree being valid and the tax a lien on the land.—Flint Land Co., Lt'd. v. Godkin et al., 136 M. 668.

One who did not raise any objections when proceedings were taken to establish a drain is estopped, after it is nearly completed, from objecting to such proceedings in an action to sell their land to pay the special drain taxes.—Auditor General v. Melze, 124 M. 285.

"This court has not held and it ought not to hold that an effort to obtain information for the purpose of avoiding the tax is an equivalent of an honest effort to pay the tax."—Bullock et al. v. Auditor General et al., 142 M. 122.

Act 200 of the laws of 1891 made no provision for refunding when sales set aside. "In the absence of such provision for repayment the purchaser buys at his risk, and takes only such title as the State had.—Crane v. Reeder, 25 M. 320; Rice v. Auditor General, 30 M. 12."—Ball v. Auditor General, 133 M. 521.

The Auditor General had no authority to issue a certificate of error against a tax deed without the request of one having an interest in the title, after the expiration of the five year period.—Plank v. Auditor General, 192 M. 313.

SUB. 1. Where there is a discrepancy between the description in the recorded plat and that in the tax deed, a certificate of error canceling the deed may be issued.—Jackson v. Sloman, 117 M. 126; See Cole v. Auditor General, 132 M. 262.

SUB. 2. A sale for taxes for a year in which it was shown the tax was twice assessed and once paid is invalid.—Rayner v. Lee, 20 M. 384. Where taxes had been paid before sale on part of the land returned, Auditor General properly withheld conveyance of the entire description, which had been returned and sold without excepting the part on which the taxes were paid.—Kneeland v. Auditor General, 113 M. 63. Certificate of error properly introduced in evidence to show deed had been canceled.—Wood v. Bigelow, 115 M. 123. Certificate was issued by Auditor General on presentation of receipt showing taxes paid before sale. Purchaser refused to recognize certificate and brought action of ejectment. Defendants had verdict below. Affirmed.

Where the amount of a tax is paid to the treasurer and erroneously applied to a wrong description, and the land is returned as unpaid and becomes State tax land, the owner is entitled to have the sale canceled under Sub. 2, Sec. 4096 C. L.—Kent et al. v. Auditor General, 138 M. 605.

Payment of taxes may be proved by parol.—Hammond v. Hannin, 21 M. 374. Where a city council assuming the invalidity of a sidewalk tax for a certain year ordered the tax reassessed in the following year and the land was sold for the taxes of both years, and the owner in due season sought to redeem from the second sale, the Auditor General was justified in canceling the former sale and issuing a certificate of error.—Youngs v. Auditor General, 118 M. 550.

SUB. 3. No title can be valid which is acquired against law.—Attorney General v. Smith, 31 M. 359. Attempts to buy off outstanding claims do not necessarily admit their validity.—Chapin v. Hunt, 40 M. 595.

Cancellations made by the Auditor General under the Gurd decision were justified, as was held in the Cole case, and cannot now be disturbed.—Auditor General v. Newman, 135 M. 288.

Sale under void publication is made in contravention, etc., within the meaning of Sub. 3. It would not be contended that if relator's deed was held void by some court that he would not be entitled to have his money refunded. Neither will it be contended but what it would be the duty of a court to hold it void in a proper proceeding. We do not see how any good purpose can be served in requiring such a proceeding to be brought before the relator could obtain his money.—Gurd v. Auditor General, 122 M. 151. This case overruled in Cole v. Auditor General, 132 M. 262.

After the confirmation of the decree for the sale of delinquent tax lands, tax sales and deeds issued thereunder can be set aside for only three reasons: (1) That the taxes were paid; (2) that the land was exempt from taxation; (3) lack of jurisdiction to enter the decree.—Rumsey v. Griffin et al., 138 M. 413.

An irregularity in including exempt land belonging to another in a description of land liable to taxation will not avoid a decree for the sale of the land for unpaid taxes.—Smith et al. v. Auditor General et al., 138 M. 582.

A decree for the sale of land for unpaid taxes cannot be attacked by showing an erroneous computation of interest on the amount due on land. A purchaser of land sold by the State for unpaid taxes acquires no interest in land exempt from taxation, included in the description of land subject to taxation.—Smith et al. v. Auditor General et al., 138 M. 582.

A land owner held not estopped by the entry of a decree in proceedings instituted by him attacking the validity of a decree entered in tax proceedings from testing the validity of a sale made by the Auditor General subsequent to the decree.—Conley v. Auditor General, 123 M. 83.

One applying for mandamus to compel the Auditor General to issue a certificate of error as to a decree under which certain lands were sold for taxes cannot as a ground for the issuance of such certificate, urge that all taxes which were a lien and a charge on the lands were not paid by the purchaser at the time when the tax titles were acquired, or that the lands sold were included in the petition of the Auditor General for years subsequent to which they had been bid in by the State, and that amounts not authorized by law were included in the judgment for taxes, and adjudged a lien against the property, since such matters are concluded by the decree, and could have been raised only in opposition to the petition of the Auditor General.—Cook v. Auditor General, 124 M. 430.

A certificate issued by the county treasurer under the provisions of Section 135 of the tax law (Sec. 4134 C. L.) limits the certification to the preceding five years and is not such a certificate as will authorize the Auditor General to set aside a tax sale for taxes under Section 98 of the tax law for the taxes of more than five years prior.—Welever v. Auditor General, 143 M. 311.

Where one who obtained a tax deed filed a bill against J. and others to settle title to the land, in which suit the regularity of the tax proceedings and the validity of said deed were directly involved, the decree for complainant therein is conclusive in mandamus proceedings by the devisee of J. to compel the Auditor General to cancel said deed.—Hanchett v. Auditor General, 124 M. 424.

The authority of the Auditor General to issue certificates or to withhold deeds under Subs. 1, 2, and 4, is upheld. Sub. 3 does not give the Auditor General power to go back of the decree of the court and review the validity of any of the proceedings prior to the decree, but confers only the power to cancel deeds for irregularities occurring after the decree.—Cole v. Auditor General, 132 M. 262.

Failure of the Auditor General to figure interest properly held not to invalidate a tax sale to the owner of the original title.—Clippinger v. Auditor General, 135 M. 1.

Deeds of state tax lands issued in violation of Sections 62 and 74 of Act 16 Public Acts of 1893 are void and the lien of the state is unimpaired and subject to purchase by one tendering a sufficient amount.—Horton v. Salling, 155 M. 502.

Mandamus will not lie to compel refund of money paid for void tax title where claimant might have demanded refund more than six years before suit was brought.—Wilkinson v. Auditor General, 147 M. 13.

SUB. 4. Where owner had written county treasurer to ascertain amount of his taxes and on receiving reply stating that all his taxes were paid except on a designated parcel had paid the amount stated, the Auditor General was warranted in refusing to convey to an applicant a parcel sold for unpaid taxes which were payable when the county treasurer had advised the owner as above. Owner having called for and paid all demanded cannot lose land by mistake of officer.—Hand v. Auditor General, 112 M. 599. Where owner in reliance upon statement furnished by city treasurer pays the amount of tax shown, land cannot be sold for taxes which failed of payment because of such misstatement.—Hough v. Auditor General, 116 M. 663. Certificate of error ordered issued where it was made to appear that owner had failed to pay relying on certificate of county treasurer that the taxes had been paid.—Carpenter v. Jones, 117 M. 91. Defense that owner was prevented from paying taxes by statement of officer that no taxes were due cannot be interposed to a bill of equity filed by purchaser under tax decree. Owner must avail himself of his statutory remedy (as provided in above section or in Sec. 70).—Kneeland v. Hyman, 118 M. 56; Kneeland v. Wood, 117 M. 174.

Sub. 4 of Sec. 98 of the Tax Law, Sec. 4096 C. L. authorizes the Auditor General to issue a certificate of error when "A certificate that no taxes were charged against said land had been given by the proper officer within the time limited by law for the payment or redemption thereof."—Hoffman v. Auditor General, 136 M. 689.

"The certificate required to be furnished by the county treasurer before a deed can be recorded certifying that there are no unpaid taxes on the land is not such a certificate as is contemplated by Sec. 98 of the Tax Law, Sub. 4.—Bullock et al. v. Auditor General, 142 M. 122.

No limit of time is fixed within which Auditor General may issue certificate of error as provided in above section. Certificate may be issued whenever showing is made and Auditor General may satisfy himself by any competent proof.—Kneeland v. Wood, 117 M. 174. There is no equity in seeking to avoid both lien and debt.—Waldron v. Murphy, 40 M. 668.

The assessment of two parcels to one person is not ground for setting aside a sale, since the owner had opportunity to appear before board of review to correct the assessment or might have paid in his part or redeemed before sale.—Kennedy v. Auditor General, 134 M. 534.

Where it is attempted to make a writ of mandamus play the part of an action at law against the State to recover a tax paid, the statute of limitations will apply as in an action of law, and the writ will not be granted when redress will ordinarily be barred by the statute of limitations.—Wilkinson v. Auditor General, 147 M. 13; McRae v. Auditor General, 146 M. 594.

Where taxes have been paid and the land erroneously included in Auditor General's petition and decree making sale confirmed, a cancellation may be made by the Auditor General even after the expiration of six months' notice by the purchaser of the tax title.—Schaar et al. v. Auditor General et al., 146 M. 504.

A valid decree of a chancery court for the sale of lands for taxes cannot be vacated by the Auditor General in issuing a certificate of error against a tax deed issued on the sale of land pursuant to the decree.—Flint Land Co. v. Auditor General, 133 M. 542.

Sub. 4, Sec. 98, gives relief to those who have been misled by certificates issued by the proper officers, but this relief being statutory applies only to such cases. It does not apply to State tax lands or to canceled sales of State tax lands.—Schulte v. Auditor General, 131 M. 676.

Auditor General cannot refund a tax if land was subject to assessment and actually assessed whether legally or illegally, and no attempt has been made to pay them.—Flint Land Co. v. Auditor General, 133 M. 542.

One who, as the owner of the government title, neglects to pay the taxes which are returned delinquent for twelve years, is guilty of such laches as to bar his right to file a bill to set aside a tax twelve years after the decree for the sale is entered.—Owens v. Auditor General, 147 M. 683.

Mandamus to compel the Auditor General to issue a certificate of error cancelling a tax deed, is not the proper remedy where the same question is pending in a case in the circuit court.—Smith v. Auditor General, 151 M. 622.

A writ of prohibition will not issue to restrain the Auditor General from cancelling a tax deed, where the petitioner has another adequate remedy.—Triangle Land Co. v. Auditor General, 172 M. 289.

Mandamus will not lie to compel the Auditor General to issue a certificate of error against the tax deed, where the validity of the tax sale is pending in another action, undisposed of, in which the validity of the sale is to be determined.—Lillie v. Auditor General, 173 M. 538.

Taxes paid and not entered on tax roll.

Certificate of county treasurer.

County treasurer to collect from township treasurer.

SEC. 98a. (4097) When taxes have been actually paid to the officer authorized by the provisions of this act to receive the same, and the entry of such payment was not made upon the tax roll, the person thereafter applying for a certificate of error or a cancellation of the taxes, shall present to the Auditor General the certificate of the proper county treasurer that such taxes were paid on the .... day of .... (giving date), as appears from copy of receipt therefor on file in his office. The county treasurer shall make a certified copy of receipts so presented to him and file the same in his office, and shall return to the person entitled thereto the original receipt. It shall be the duty of the county treasurer to immediately notify the person or officer receiving such payment of the production of such receipt and require payment to be made forthwith to him, the said county treasurer, of the amount not discharged by entry upon the tax roll at the time of payment. And in case of failure of said delinquent treasurer to pay said amount, as requested, within thirty days of the receipt of said notice, it shall be the duty of the county treasurer so notifying, to institute suit against delinquent treasurer and his bondsmen for the recovery of said amount. Upon the receipt of such money so paid to him, the county treasurer shall at once pay the same over to the proper township or other officer or fund entitled to the same, and shall notify the board of supervisors at their annual session in October of the several amounts thus collected and paid over.

History:—Added 1905, p. 309, Act 212, Eff. Sept. 16;—Am. 1909, p. 26, Act 19, Eff. Sept. 1.

Irregularities not prejudicial to property rights of owner shall not invalidate tax.

Records, etc., evidence.

Absence or omission of records, etc.

Regularity presumed.

Signing of records, etc.

Auditor General's deed unimpeachable.

SEC. 99. (4098) No tax assessed upon any property, or sale therefor, shall be held invalid by any court of this State on account of any irregularity in any assessment, or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any person other than the owner, or on account of any other irregularity, informality, or omission, or want of any matter of form or substance in any proceeding that does not prejudice the property rights of the person whose property is taxed; and all proceedings in assessing and levying taxes and in the sale and conveyance therefor, shall be presumed by all the courts of this State to be legal, until the contrary is affirmatively shown. All records, statements and certificates herein provided for shall be *prima facie* evidence of the facts therein set forth. The absence of any record of any proceeding or proceedings, or the omission of any mention in any record of any vote or proceeding, or of mention of any matter in any statement or certificate that should appear therein under the provisions of any law of this State, shall not affect the validity of any proceeding, tax, or title depending thereon, provided the fact that such vote or proceeding was had or tax authorized is shown by any other record, statement or certificate made evidence by the terms of this act or any other law of this State. No tax, or sale of property for any tax, shall be rendered or held invalid by showing that any record, statement, certificate, affidavit, paper or return cannot be found in the proper office; and unless the contrary is affirmatively shown, the presumption shall be that such record was made, and such certificate, statement, affidavit, paper or return was duly made and filed. Where any statement, certificate or record is required to be made or signed by a school district board or a township board, such statement, certificate or record may be made and signed by the members of such boards, or a majority thereof, and it shall not be necessary that other members be present when each signs the same. The provisions of this section shall not be construed to authorize any showing impeaching the validity of any deed executed by the Auditor General under the provisions of this act, but such deed shall be held absolute and conclusive as herein provided.

History:—C. L. '97, 3922.

Curative statutes can never cure want of jurisdiction.—Hart v. Henderson, 17 M. 222; Township of Caledonia v. Rose, 94 M. 216. But only provides that irregularities or omissions which are not jurisdictional and do not prejudice the property owner will not void tax or sale.—Auditor General v. Keweenaw Ass'n, 107 M. 405. Irregularities that do not avoid sales.—See notes and cases at 14024n C. L. '15.

No act legalizing any tax or assessment or any tax or assessment roll shall be construed as legalizing any defect not distinctly set forth in the act.—3995n C. L. '15. Section does not relieve against defects which go to the jurisdiction of the body authorizing the levy.—Auditor General v. D. S. S. & A. Railway Co., 116 M. 122.

REVIEW: When no changes have been made by the board of review in the assessment roll prepared by the supervisor the roll is not rendered invalid because the board of review have not written the figures of the assessor in the columns prepared for that purpose.—Ball v. Ridge Copper Co., 118 M. 7. Where there is no claim that a board of review acted fraudulently in assessing land and there is sufficient testimony to support the finding of the lower court that the board did not act illegally or inequitably in fixing such assessment, the finding will not be disturbed.—Aurora Iron Mining Co. v. City of Ironwood, 119 M. 325.

While the board of review has no right to change values after the time provided by law, yet in the absence of proof that the board actually acted on question of value after the lawful time, the mere fact that the clerical work of setting down such values in the proper column was not completed during a meeting of the board will not render the tax invalid.—The date of the certificate of the board of review attached to the roll is not important as bearing upon the question of the validity of the taxes.—Auditor General v. Ayer, 122 M. 136.

The failure of the board of review to keep a record of its proceedings as required by Sec. 1027 C. L. '15, does not render tax spread on roll invalid as against one who has suffered no injury by such omission. Cured by Sec. 99.—Auditor General v. Buckeye Iron Co., 132 M. 454.

The provisions of this section do not apply to the levy on the property of one who did not own the property against which the tax was assessed.—Rapid Railway Co. v. Schreeder, 190 M. 684.

APPORTIONMENT: Where charter requires council to apportion tax among wards and council instructed supervisors with assistance of recorder to make apportionment, held that to invalidate it must be shown that injury resulted to the person assessed.—Fay v. Wood, 65 M. 390. Form of record of apportionment is sufficient if it appears that just share is distributed among townships.—Boyce v. Sebring, 66 M. 210. Omission of signature of chairman and clerk to record of proceedings may be supplied by them during their then term of office.—Record of proceedings of board of supervisors which does not specifically show apportionment of State tax in record of report thereon is sufficient if defect is supplied by the report as a whole. Resolution "that there be levied on the taxable property of county for county purposes a tax of 1¼ per cent on the valuation of the several rolls of said county, making a total county tax of $——— (amount given)," does not affect validity of tax where it does not appear that this was the only action or record on the subject, though the sufficiency is questionable.—Boyce v. Auditor General, 90 M. 314. Resolution providing that a specified amount of State and county tax should be assessed on rolls of the several townships, naming them and placing opposite the name of each the amount to be assessed and giving total of said taxes respectively, was sufficient compliance with the statute, it not being shown that the apportionment was unequal.—Hoffman v. Lynburn, 104 M. 494.

EQUALIZATION: Committee to equalize the assessment rolls reported to board; report adopted: *Held*, action of committee that of board and *was sufficient*.—Tabulated record of assessment in all townships, showing amount added to or deducted from in equalizing, followed by aggregate of both real and personal property plus amount added or minus amount deducted, followed by final totals, held sufficiently definite.—Boyce v. Sebring, 66 M. 210. Where record of equalization shows only entry of the aggregate valuation of real and personal property of each township as determined by the board, the presumption is that no additions or deductions were found necessary or made.—Chamberlain v. City of St. Ignace, 92 M. 332; Goudreau v. City of St. Ignace; Brooks v. same; Orth v. same, 97 M. 413. Failure of clerk of board of supervisors to sign record of equalization and apportionment will not affect validity of township and school taxes.—Clerk of county and of board when record of equalization was made was deputy county clerk at time of trial, and rights of third parties had not intervened: *Held* proper to permit to amend the record by affixing the omitted signature.—Sheldon v. Marion, 101 M. 256. Where record of equalization shows aggregate real estate as assessed in each township and amount of personalty and whole amount of taxable property as equalized, and nothing to indicate that equalization was based on aggregate of real and personal or that it was not based on the realty alone, it will be presumed that it was based solely on the realty. Where record shows amount of real estate assessed, amount of assessed personalty and the amount of taxable property as equalized, and the amount added to or deducted can be readily ascertained by computation, held sufficient compliance with the statute.—Auditor General v Ayer, 109 M. 694. Where supervisors add to or deduct from valuation of real estate without reference to total taxable property, held sufficient.—Auditor General v. Longyear, 110 M. 223. Where record of equalization shows total valuation of property as assessed and total as equalized, the fact that valuation of personal property and real property are not separately entered will not destroy the presumption that additions or deductions were upon real property; and absence of dollar sign in record does not invalidate where the figures are separated in such manner as to indicate dollars and cents.—Auditor General v. Sparrow, 116 M. 574. The record failing to show that board of supervisors changed values, the fact that it did not show the additions and deductions made in equalizing does not make the record insufficient.—Auditor General v. Ayer, 122 M. 136.

ROLL AND WARRANT: Special tax placed in separate column on tax roll does not entitle any one to complain, as no rights could possibly be prejudiced thereby.—Wall v. Trumbull, 16 M. 228. Objection that there is no dollar mark opposite the valuation and that the figures are so written as to be divided by a red line so as to leave an uncertainty as to the amount is not well taken where the amount of the taxes are properly carried out.—First National Bank of St. Joseph v. Township of St. Joseph, 46 M. 526. See also Bird v. Perkins, 33 M. 28. The fact that headings of pages of tax roll were not filled out with name of township and county does not invalidate roll when names of township and county were printed on outside of book.—Auditor General v. Keweenaw Ass'n, 107 M. 405. Tax roll not invalidated by fact that supervisor's warrant directs the payment of the 1 per cent which he is authorized to add to avoid fractions to reimburse a delinquency of the former year growing out of an error in not adding sufficient amount of percentage.—Grand Rapids v. Welleman, 85 M. 234. The fact that the collector used the original tax roll instead of a copy as the Muskegon charter required, and that the treasurer failed to verify his statement of uncollected taxes within the time specified, does not defeat the taxes in the absence of any showing that they were unjust.—Auditor General v. Hutchinson, 113 M. 245. Failure of assessing officer to prepare assessment and tax roll in exact form prescribed by statute, in that taxes were spread on tax roll instead of on assessment roll, did not prejudice property rights of taxpayers, and defect is cured by Sec. 99.—Ludington v. City of Escanaba, 115 M. 288. The fact that no warrant was attached to tax roll by supervisor held not to render the taxes invalid or discharge the lien.—Auditor General v. Sparrow, 116 M. 574. Warrant not defective if made to township treasurer by title and name omitted.—Loud & Sons Lumber Co. v. Hagar, 118 M. 452.

Where tax roll showed error in aggregate of taxes opposite certain parcel, which county treasurer corrected before sale, held that as this could not injure the owner it must be disregarded.—Case v. Dean, 16 M. 12. But this holding should not be understood as giving county treasurer authority to make changes in the roll or Tax Record.

Where tax roll described land as "T. 6, R. 6" and there was but one T. 6, R. 6 in the township, description held sufficient.—Dumphy v. Auditor General, 123 M. 354. In West Michigan Lumber Co. v. Dean, 73 M. 459, supervisor attached warrant to original equalized assessment roll and delivered it to the treasurer. *Held*, that it conferred authority to seize property to satisfy tax.

STATUTORY TIME—RETURNS: The proceedings required by law and the filing of the treasurer's bond having taken place after the time designated by law, but before the time required for the handing over of the assessment roll; *Held*, that the delay was immaterial. Delay beyond the time required by law in appending the warrant to the assessment roll furnishes no ground of relief.—Hubbard v. Winsor, 15 M. 146.

Statutory time for doing an act is directory where time is not fixed for purpose of giving a party a hearing or for some purpose important to him.—Fay v. Wood, 65 M. 390. A tax title is not invalidated merely by the township treasurer's neglect to file his bond as collector of State and county taxes within the prescribed time, if it appears that he actually filed his bond and received the tax roll, and that his right to it had not been contested.—A tax title is not invalid merely because the original return from the township treasurer to the county treasurer had been sent to the capitol instead of being retained in the county treasurer's office as it should have been.—Stockle v. Silsbee, 41 M. 615. Where the township treasurer's return does not show that demand was made for taxes but is in statutory form, held sufficient, as if personal demand was necessary it must be presumed to have been made.—Dickison v. Reynolds, 48 M. 159. Failure of county treasurer to enter delinquent list on books does not invalidate the tax if the delinquent list was put in permanent form and preserved in county treasurer's office.—Auditor General v. Keweenaw Ass'n, 107 M. 405. Failure of collector to make statement under oath of all moneys received by him as collector does not render proceedings to sell void; such oath is required to secure an accurate accounting of all moneys in collector's hands and has no reference to the return of land for delinquent taxes.—Tweed v. Metcalf, 4 M. 579. Failure to make such statement does not prejudice tax-payer.—Boyce v. Stevens, 86 M. 549.

IRREGULARITIES: An irregularity is such a defect in legal proceedings as may be waived; a nullity is one that cannot.—Jenness v. Lapeer Circuit Judge, 42 M. 469. A blunder that is so evident as to correct itself not entitled to consideration.—Smith v. Lloyd, 29 M. 381. Objection based on manifest clerical error which corrects itself held frivolous; justice ought not to stumble at straws.—Peck v. Houghtaling, 35 M. 126. One cannot complain of an error in his favor.—Kelso v. Saxton, 40 M. 666. The party alleging error must show error to his prejudice.—Louden v. E. Saginaw, 41 M. 18. Error will not be presumed; it must be affirmatively made out.—People v. Scott, 56 M. 154. Irregularities in assessment when not prejudicial to protestant give no right of recovery.—White v. Millbrook, 60 M. 532. The time has gone by if ever was when the proceedings of taxing officers are to be criticized with microscopic nicety and the exact time and method of every step examined to detect a departure from the law, however insignificant or unintentional. It is probable that in no tax case have all the proceedings been exactly and punctiliously correct, but they are sufficiently so for legal purposes in any case if no error is committed which can prejudice the person taxed.—Stockle v. Silsbee, 41 M. 615. In matter of description see Johnstone v. Scott, 11 M. 232; Wright v. Dunham, 13 M. 414; Bird v. Perkins, 33 M. 28; Wilt v. Cutler, 38 M. 189.

Irregularities in assessment do not defeat a tax if they do not prejudice the person taxed.—Stockle v. Silsbee, 41 M. 615. Irregularities in the prior proceedings which do not prejudice the property rights of the person whose land is taxed will not defeat the claim of the State. Thus, it is no defense to an entry of a decree against the land that no warrant was annexed to the tax roll delivered to the collecting officer; that the return of the delinquent taxes was not verified; or that a majority of the board of review did not sign the certificate attached to the assessment roll.—Auditor General v. Sparrow, 116 M. 574. Any irregularity or omission in the proceedings to levy or collect a tax which is not jurisdictional and does not prejudice the rights of the property owner will not render the tax invalid. It not being shown that the respondent had any personal property in the township, its rights were not prejudiced by omission of word "unknown" in assessment roll.—Auditor General v. Keweenaw Ass'n, 107 M. 405.

Under Tax Law No. 99 (Public Acts of 1893, p. 399) which provides that no sale shall be held invalid on account of any irregularity in any proceeding that does not prejudice the right of the person whose property is taxed, failure to attach a certified copy of the decree to the Tax Record does not invalidate a tax sale made pursuant thereto by the Auditor General.—Gates v. Johnson, 121 M. 663.

Tax for grading and paving was not paid and property was bid in by the city. After lapse of years abutting owners who knew of improvements cannot set up any irregularity in return of roll to common council by assessor.—Tuller v. City of Detroit, 126 M. 605.

Where the assessment and tax rolls show the assessment to have been made on buildings as personal property, the assessment cannot be construed as an assessment of a lease-hold interest.—**City of Detroit v. George, 214 M. 664.**

MISNOMER: It does not mislead real owner.—Fletcher v. Post, 104 M. 424. Tax not invalid because assessed in name of other than owner.—Auditor General v. Keweenaw Ass'n, 107 M. 405. Also Menominee v. Martin Lbr. Co., 119 M. 201; Iron Star Co. v. Wehse, 117 M. 487. Assessment against "Ellen Marcier" instead of "Ellen Macier" held within the rule of idem sonans and not to invalidate the tax.—City of Detroit v. Macier, 117 M. 76. Land assessed to "H. M. Loud & Sons" instead of proper name of corporation; *Held* would not render tax invalid and would authorize levy on personal property of corporation. —Loud & Sons Lumber Co. v. Hagar, 118 M. 452. Tax assessed by initials of corporate title to resident corporation who owned and occupied the property is not invalid because not assessed to full name.—Lumber Co. v. Village of Oscoda, 97 M. 221.

RECORDS, FILES, ETC.: Auditor General may require copies gratis.—13728n C. L. '15. Records are public property; penalty for mutilation or wrongfully retaining.—15079 C. L. '15. Restoration of lost records.—12264n e. s. C. L. '15. Absence of records in town books showing assessors were sworn does not furnish prima facie evidence that they were not.—Sibley v. Smith, 2 M. 486. Objected to record of proceedings of supervisors that it did not show who constituted the board nor that a quorum was present: *Held*, presence of supervisors or at least a quorum would be presumed.—Lacey v. Davis, 4 M. 140. Certificates to assessment roll are necessary only because they are required by statute; and the legislature may provide in express terms that a tax sale shall not be void for defect in or omission of the certificate. Whatever it may dispense with in advance it may retrospectively.—Sinclair v. Learned, 51 M. 335. See also Burt v. Auditor General, 39 M. 126. Where a sum of money has been lawfully voted to be raised by taxation for township purposes, the failure of the board of supervisors to direct the levy would not invalidate the action of the supervisors in spreading it upon the roll.—Upton v. Kennedy, 36 M. 215. The real purport and effect of the statute is that sale shall not be void because return or other files or records are not found in the proper place, unless it is shown that such files or records never existed.—Upton v. Kennedy, 36 M. 215. The absence of official records from the places assigned by law for their keeping does not support the presumption that they never existed; the contrary is presumed.—Hogelskamp v. Weeks, 37 M. 422. As to time of making clerk's certificate to supervisors; when conclusive, etc.—Smith v. Crittenden, 16 M. 152. Where tax ordered by board of supervisors is not certified to by township clerk, burden is upon contestant to show that such tax was not originally authorized by competent authority.—Auditor General v. McArthur, 87 M. 457. "No tax or tax sale shall be held invalid" does not apply to warrant or to anything else except "tax" and "sale."—Muskegon v. Martin Lumber Co., 86 M. 625. Does not apply to proof of publication.—Benedict v. Auditor General, 104 M. 269. Record of equalization not invalid because of omission of dollar mark.—Auditor General v. Sparrow, 116 M. 574. A tax deed given upon a sale which included township and school taxes is not rendered invalid by showing that the board of supervisors did not direct any taxes for township or school purposes to be assessed in the township for that year.—Robbins v. Barron, 33 M. 124.

Writings are not admissible in evidence as public records without proof of their official character.—Hall v. People, 21 M. 456. Whenever the law requires written evidence of the action taken by officers in the tax proceedings the record becomes the only legal and proper evidence of these facts; but this does not exclude entirely the usual presumption in favor of the regularity and honesty of official action.—Mills v. Township of Richland, 72 M. 100.

Tax sale not void because decree was not entered in record book of decrees and did not contain a description of the property.—Hooker v. Bond, 118 M. 255. Clerk's omission to record it does not invalidate a decree properly signed. —Hoffman v. Pack, Woods & Co., 123 M. 74.

The loss of papers relating to the proceedings on the Auditor General's petition will not in a collateral proceeding defeat the jurisdiction of the court or render void the decree.—Hoffman v. Pack, Woods & Co., 123 M. 74. Testimony of county treasurer and clerk, together with the record of accounts between those officials that contain items which must have been taken from the report, held sufficient to show that report of sale was filed.—Ibid.

Whenever, in the opinion of the board of supervisors of any county in this State, from the defaced or mutilated condition of any assessment rolls, returns of township treasurers, or other papers on file, under the provisions of law, in the office of the treasurer of such county, and for their better preservation, it shall be necessary that the same be copied or bound, or both, it shall be lawful and shall be the duty of such board of supervisors to authorize and order the copying or binding, or both, of such archives.—2326 C. L. '15. Whenever the board of supervisors of any county shall order the copying of any rolls or other papers, as provided in section one of this act, the treasurer of such county shall have the supervision of such work, and shall employ some proper person or persons to perform the same, who shall, before entering upon the discharge of such duty, subscribe an oath to perform the same in a true and faithful manner; and it shall be the duty of such county treasurer to compare all rolls or papers so copied, with the originals, and shall attach to each separate copy, roll or other paper, his certificate that the same is a true copy of the original roll or other paper, and that such copy was made by a person duly authorized under the provisions of law to make the same.—2327 C. L. '15. Any copy of any assessment roll, tax roll, township treasurer's return, or other paper, made and certified under the provisions of this act, shall be valid and lawful as evidence in any court as the original would have been.—2328 C. L. '15.

Duties of prosecuting attorney.

SEC. 100. (4099) It shall be the duty of the prosecuting attorney of each county to give his counsel and advice to the county treasurer, the township treasurers, and the supervisors of the county whenever they or any of them may deem it necessary for the proper discharge of the duties imposed upon them in this act free of charge.

History:—C. L. '97, 3923.
See Sec. 90.

Deed to deceased person, etc.

SEC. 101. (4100) In all cases of sale of lands for taxes, if the purchaser or his assigns shall die before a deed shall be executed on such sale, the deed may be executed by the Auditor General, to and in the name of the deceased person, if such deceased person being still alive would be entitled to a deed, which deed shall vest the title in the heirs or devisees of such deceased person, in the same manner, liable to like claims of creditors and other persons as if the same had been executed to said deceased person immediately previous to his death, or the executor or administrator may assign the certificate of purchase and the deed may issue to the assignee thereof, and in like cases which have heretofore occurred, the same rule shall apply, and all deeds heretofore issued in the name of any person deceased who, if living at the time of the execution thereof, would have been entitled thereto, shall have like effect as above provided.

History:—C. L. '97, 3924.

Return of delinquent tax on homestead and part paid State lands.

SEC. 102. (4101) The county treasurer shall, at the same time when he makes his return of delinquent lands to the Auditor General, make a similar return to the Commissioner of the State Land Office of all homestead and part paid State lands, the fee of which is in the State, the taxes upon which have not been collected, with a statement of the amount thereof. The Commissioner of the State Land Office shall provide suitable books, and enter in the same the description of every parcel of land so returned to his office, and the taxes thereon. The person holding such interest in any parcel of said lands shall, on or before the first day of July following such return, pay to the State Treasurer the taxes assessed thereon, with interest at the rate of one per cent per month or fraction thereof from the first day of March last preceding; and in default thereof the certificate of purchase of such parcel shall become void and such land shall be subject to sale and redemption in the same time and manner as lands forfeited for non-payment of interest; and no patent shall be made of such lands until all taxes thereon are paid.

Forfeiture for non-payment.

History:—C. L. '97, 3925;—Am. 1899, p. 433, Act 262, Eff. Sept. 23.

SEC. 103. (4102) The Commissioner of the State Land Office shall, on or before the first day of May and November in each year, make out and furnish to the Auditor General a statement containing a description of the lands upon which the taxes have been paid, and the amount of such payments, and shall, at the same time, transmit to each county treasurer a copy of such statement so far as the same relates to his county. The Auditor General shall credit to each county its proper part of such taxes, and the county treasurer shall credit each township with its share of such amount.

Report of taxes paid on State lands.

Credit of taxes.

History:—C. L. '97, 3926.

SEC. 104. (4103) If any person dispossessed of lands purchased in pursuance of the provisions of this act shall have made improvements thereon, he shall be entitled to recover what such improvements are worth, and shall have a lien on such lands therefor and may enforce the same by bill in equity where no other provision is made by law.

Lien for improvements.

History:—C. L. '97, 3927.

Sec. 13211n C. L. '15 relative to compensation for improvements in action of ejectment applies only to lands described in plaintiff's declaration and in the deeds or other instruments through which the defendant claims.—King v. Potter, 18 M. 134. County treasurer became purchaser at sale conducted by him; purchase held to be a nullity and purchaser not entitled to improvements made by him.—Clute v. Barron, 2 M. 192. Lien for improvements is to be enforced in supplementary proceeding in chancery.—Weimer v. Porter, 42 M. 569. Evidence of the value of improvements is properly excluded in action of ejectment where defendant neglects to file a claim for compensation therefor under 14465r C. L. 15.—Newaygo Mfg. Co. v. Echtinaw, 81 M. 416.

Wanton expenditures for improvements not made in good faith.—McCreedie v. Buxton, 31 M. 383. Plaintiff having gone upon the land and made improvements with the knowledge that the title to the land was in the railway company, and that it claimed ownership, could not upon failure of his title recover the value of the improvements made.—When the rightful owner has obtained possession of the property without resorting to an action at law he is not liable in an action at law for the value of the improvements made by another. Sec. 13211n C. L. '15 applies only to action of ejectment.—Lemerand v. F. & P. M. R. R. Co., 117 M. 309.

Statutes allowing compensation for improvements when defendant in ejectment has been in possession, etc., cannot be invoked in behalf of one who entered as a tenant.—Wolf v. Houghton, 92 M. 136. The fact that the occupant by exercising diligence might have discovered that he had no title does not necessarily negative good faith.—Petit v. F. & P. M. R. R. Co., 119 M. 492.

To enable defeated holder of tax title to enforce a lien for improvements the title must have been adjudged against him in a proper action. He must then resort to equity proceedings to have the amount of his lien determined, and its collection enforced. Statute of limitations does not run against such lien before the judgment is rendered declaring the title invalid. Such right is not affected by subsequent tax laws.—Tillotson v. Circuit Judge, 97 M. 585. One taking possession under tax deed in good faith and making improvements may recover for such improvements if his title prove invalid.—Croskery v. Busch, 116 M. 288. Provision as to improvements applies to homesteaders holding under Sec. 131.—Conn. M. L. Ins. Co. v. Wood, 115 M. 444. Further as to recovery for improvements see Rawson v. Parsons, 6 M. 401; King v. Potter, 18 M. 134; Van Denbrooks v. Carreon, 48 M. 283; Guild v. Kidd, 48 M. 307; Baldwin v. Cullen, 51 M. 33; Clark v. Green, 62 M. 355.

This section has no application to one who enters in violation of Sec. 142.—Corrigan v. Auditor General, 125 M. 125.

Under 3 C. L. 1915 (Sec. 13211n) permitting a defendant ousted in ejectment to recover for improvements, provided he shall have been in actual occupancy for six years before the commencement of the action, the occupancy contemplated is such as would give title by adverse possession; hence where a part of the period of defendant's occupancy was during the life of the life-tenant, he was not entitled to recover for improvements against other remainder-men who were defendant's co-tenants.—Sleight v. Roe, 125 M. 585.

SEC. 105. (4104) In case of the organization of a new county after the time for making the assessment roll, and prior to the return of the township treasurer, such new organization shall in no way affect the assessment, collection

Reorganization of counties and townships.

or return of taxes for that year on any lands attached to the new county. No division of a township after the time for making the assessment roll, and prior to the return of the township treasurer, shall in any way affect the assessment, collection and return of such taxes; but such taxes shall be assessed, collected and returns made as though there had been no such division. If lands are detached from any county after the taxes thereon are returned to the Auditor General, and any such taxes are afterwards rejected or set aside, the county from which they were detached shall receive credit, and the county to which they are attached shall be charged, as may be proper under the provisions of this act.

History:—C. L. '97, 3928.

Board of supervisors have no power to alter boundaries of townships when fixed by legislature.—Township of Harrison v. Board of Supervisors, 117 M. 215. As to new townships.—Comins v. Harrisville, 45 M. 442. Assessment to pay interest on bonds after division of township.—First National Bank v. Supervisors, Mich. Mandamus Cases 1346.

As to organization of new counties see Carleton v. People, 10 M. 250; Bay County v. Bullock, 51 M. 544; Attorney General v. Marr, 55 M. 445; Attorney General v. Weimer, 59 M. 580. As to adjustment of tax accounts between new and old counties see Clare County v. Auditor General, 41 M. 182; Bay County Supervisors v. Arenac Supervisors, 111 M. 105.

Adjustment of rights and liabilities on division of municipal territory.—3452 C. L. '15.

Payment before sale.

Part payment does not stay proceedings.

SEC. 106. (4105) The taxes on any lands returned as delinquent may be paid to the county treasurer or to the State Treasurer at any time prior to the day of sale. After such petition is filed with the county clerk, payment of part of the taxes therein specified shall not stay proceedings thereon to enforce payment of such part of such taxes as are not paid, but such proceedings shall continue as to all unpaid taxes as herein provided.

History:—Am. 1895, p. 229, Act 154, Eff. Aug. 30;—C. L. '97, 3929.

Payment of taxes to State Treasurer is made through Auditor General.

This section does not apply to taxes for years where sales are canceled.—Schulte v. Auditor General, 131 M. 676.

See Secs. 53, 59, 138.

Municipal charter provisions.

Municipalities included.

Board of review in cities.

SEC. 107. (4106) This act shall be applicable to all cities and villages where not inconsistent with their respective charters. With such exceptions, the provisions herein as to supervisors, township treasurers, and boards of review, shall include all assessing and collecting officers, and all boards whose duty it is to review any assessment roll. The word township may include city, ward or village. When, by the charters or ordinances of any city or village, delinquent taxes or assessments are returned with other taxes to the county treasurer, such city or village shall not be entitled to payment of or credit for the same until the money has been received, notwithstanding anything in their respective charters to the contrary: *Provided*, That in any incorporated city, the charter of which does not provide for a board of review, such board shall consist of the several supervisors or other officers making the assessment, the city attorney, and additional members to be appointed by the common council who shall not be aldermen, equaling the

Sessions and proceedings.

Certification of rolls.

Oath of office.

number of supervisors or assessing officers. The session of said board of review shall be held at the council room on the same days as designated in this act for the meeting of the township board of review, and the proceedings thereof conducted, as near as may be, in the same manner. Said board shall elect a chairman and clerk, who shall certify to the correctness of the several assessment rolls when completed, substantially as the form prescribed in sections twenty-nine and thirty of this act. The appointed members of said board of review shall take the constitutional oath of office, which shall be filed in the office of the city recorder or clerk.

History:—C. L. '97, 3930.

Levy of municipal tax exceeding the aggregate amount limited by the charter for a single year is illegal and cannot be sustained.—Wattles v. Lapeer, 40 M. 624; Connors v. Detroit, 41 M. 128. Charter limitation of amount "raised by taxation" includes excess voted by freeholders.—Schneewind v. Niles, 103 M. 301. But judgment against municipalities should be assessed though such assessment would make total exceed charter limit.—Hammond v. Place, 116 M. 628. Tax to pay interest on city bonds to take stock in water supply company.—11298 C. L. '15. As to assessment to pay judgment against city see Shippey v. Mason, 90 M. 45. A city tax voted without observing the charter requirements to enter at large upon the minutes of the council any act, proceeding, etc., is invalid.—Pontiac v. Axford, 49 M. 69. Where charter requires common council to determine by resolution the amount to be raised for contingent fund and also for interest fund, and council directed a gross sum for both, held that failure to observe charter requirements rendered tax void.—Fay v. Wood, 65 M. 390. When the mode of assessments is prescribed by the charter or by ordinances adopted under its authority, measure of power is limited thereby.—Whitney v. Village of Hudson, 69 M. 189.

Where the charter provides for apportionment of school taxes by the county clerk after assessment, review and certificate of city clerk, action is not dependent upon equalization by the board of supervisors.—Chamberlain v. City of St. Ignace, 92 M. 332.

Mandamus will not lie to compel the officers and common council of a city to pay a judgment out of moneys on hand when such moneys were raised and are required for other purposes; the creditor's remedy being under the statute requiring such judgment to be spread upon the tax roll.—Griswold v. Common Council of Ludington, 117 M. 317. Assessment in cities and villages for fire department.—3468 C. L. '15. As to limitation of municipal taxation see Arbuckle, Ryan & Co. v. City of Grand Ledge, 122 M. 491.

REVIEW: In Darmsteatter v. Moloney, 45 M. 621, under Detroit charter requiring assessor's certificate to assessment roll, it was held where assessor is the officer to present the roll to the board of review and is himself a member of the board, the roll does not need to be authenticated by his certificate. A city charter having provided for a board of review which has final jurisdiction of appeals of assessment of city taxes, the question whether the assessment is excessive is not for the county to try.—Williams v. Saginaw, 51 M. 120. Where by law tax-payers have the right to present their claims for reduction of taxation or valuation in writing and to make their proofs in support of such claim by affidavit, the board of review have no power to refuse to consider such claim unless the claimants appear in person and submit to oral examination.—McMoran v. Wright, 74 M. 356. Where charter provides that board of review during certain sessions may change values and that after that time, it shall not increase any assessment, an increase after the period will void the assessment and the taxes levied thereunder.—Auditor General v. Sessions, 100 M. 343. In Avery v. E. Saginaw, 44 M. 587, it was held that the city board of review cannot increase an assessment without notice to the party assessed and giving him opportunity to be heard. But the provisions of the charter of any other city might vary this decision in a similar case.

A sewer assessment will not be set aside on the ground that the construction of the sewer was not embraced within a report at the suit of one who did not avail himself of the right to be heard thereon before common council which by the charter was constituted a board of review with power to correct, set aside or confirm the assessment.—Nelson v. Saginaw, 106 M. 659.

As to discretion of common council to levy taxes for city purposes, see Water Commissioner v. Common Council of E. Saginaw, 33 M. 164. Collection of general tax for proper city or village purposes will not be restrained on the ground that it was rendered necessary by improper use of funds.—Clee v. Village of Trenton, 108 M. 293. Further as to municipal taxation see Mitchell v. Negaunee, 113 M. 359; Pioneer Iron Co. v. Negaunee, 116 M. 430; People v. Mahaney, 13 M. 495.

SYNOPSIS OF TAX PROVISIONS OF ACT 3 OF 1895 PROVIDING FOR INCORPORATION OF VILLAGES: 2555-2839 C. L. '15. All villages subject to provisions of act.—2555-2826. Election of treasurer and assessor.—2569. Clerk to report amount of taxes to be raised to treasurer.—2602. Duties of treasurer.—2605 e. s. Assessor shall perform such duties in relation to assessing property and levying village taxes as are prescribed by act.—2617. Imposition of tax or assessment requires two-thirds vote of trustees elect.—2623. Assessment for sidewalks.—2649; for street improvements.—2651; for grading.—2655; for paving, bridges and culverts.—2657-8; for sewers, drains and watercourses.—2664-2672. Abatement of nuisance to be assessed against premises.—2689. Assessment for cemeteries.—2695. Public improvements—board of assessors—special assessments. —2704-24; Act 39 of 1899. General corporation taxes: Purposes and limit.—2726-32; assessment.—2733; review.—2734-7; certification by council.—2738; apportionment and collection.—2739-2742; return of delinquent real property.—2743; sale and redemption.—2744; suit for personal taxes.—2745; voting additional expenditures.—2748; appropriation of private property, assessment for benefits.—2784n; enforcing special assessments.—2830.

Village charters will not be so construed as to change the operation of the general taxing laws unless such intent is plainly expressed.—Howell v. Cassopolis, 35 M. 471. Further as to village taxes see Boyce v. Peterson, 84 M. 490; Common Council v. Smith, 99 M. 507.

Provision of general tax law making it applicable to villages, etc., cannot be invoked to validate illegal action of village assessor which is governed by charter. —Common Council v. Smith, 99 M. 507.

See Secs. 29-31.

Return of city and village taxes.

Collection thereof.

Judicial sale.

State bids protected.

Proviso.

Sec. 108. (4107) The authorities of any city or village, the charter of which does not so provide, may provide by ordinance for the return of all unpaid taxes on real property to the county treasurer in the same manner and with like effect, as returns by township treasurers. The taxes thus returned shall be collected in the same manner as other taxes returned, as provided in this act. The authorities of any city or village which, by its charter, has the right to sell lands for unpaid taxes or assessments, may provide for judicial sale of such lands. Such sale shall be made on petition filed in behalf of the city or village in interest, and shall conform, as near as practicable, to the provisions as to sale in this act: *Provided*, That whenever any lands are offered at such sale that have been bid to the State at any tax sale made under the provisions of any general tax law, and upon which such bid or bids remain undischarged, any sale made of such lands at the city tax sale shall be conditioned upon the payment of the tax lien held by the State on said land, and the sale so made shall be void if the tax lien held by the State shall remain unsatisfied.

History:—Am. 1897, p. 262, Act 206, Eff. Aug. 30;—C. L. '97, 3931.

The provisions of a city charter required that when a petition shall be presented the council shall determine by resolution the necessity of paving and repairing streets when the improvements are to the extent that a special assessment may be made. *Held:* (1) That the charter does not deny authority to the council to levy and collect special assessments except when made on petition; (2) That the petition may be general in its terms, and requires no specified number of signatures. A requirement of a city charter that the council shall review a special assessment roll and consider the objections, and when satisfied with the same confirm it by resolution, does not require any stated method of procedure, and the fact that a resolution confirming the roll was adopted will be sufficient.—Auditor General v. Hoffman, 129 M. 541.

Acts of deputies.

Sec. 109. (4108) When an officer is authorized to do any act his deputy shall have the same authority, and such officer shall be responsible for the acts of his deputy.

History:—C. L. '97, 3932.

Deputy Auditor General, Act 156 laws 1907. Deputy county treasurer.—2363 C. L. '15. Deputy county clerk.—2433 C. L. '15. Deputy township treasurer, see Sec. 111. Deputy township clerk.—2121 C. L. '15.

Compensation of county and township officers.

Sec. 110. (4109) Supervisors shall be allowed for their services in assessing property, making tax rolls, and for extending taxes thereon, at the rate of two dollars for each day actually and necessarily spent in making the same; the members of the board of review shall be paid at the same rate per day for each day actually and necessarily spent in the attendance upon the board; the accounts for such services shall be verified, audited and paid as other township expenses. County officers shall be paid for services under this act by salary or otherwise as the board of supervisors shall determine: *Provided*, That all cities in this State shall be exempted from the provisions of this section, and the common council shall have power to fix and determine the compensation of the city assessor and of his assistants and of the boards of review, boards of estimates, and all other like officers.

Proviso as to certain cities.

History:—C. L. '97, 3933.
County clerk whose salary is fixed at a specified amount is not entitled to additional compensation for services contemplated by act.—Gardner v. Newaygo Co. Supervisors, 110 M. 94. Necessary disbursements in pursuance of his duties are proper charges.—Ibid.
See Sec. 90.

Deputy township treasurer.

SEC. 111. (4110) Any township treasurer with the consent of his bondsmen, which consent shall be in writing and shall be filed with the clerk of the township, may appoint a deputy who shall possess all the powers and may perform all the duties of the treasurer. Such township treasurer and his bondsmen shall be liable for all the acts and defaults of such deputy treasurer. Such deputy shall be paid by the treasurer.

History:—Am. 1897, p. 271, Act 214, Eff. Aug. 30;—C. L. '97, 3934.

Tax payments unaccounted for.

SEC. 112. (4111) If at any time it shall be discovered that the treasurer of any township has received the tax assessed upon property which has been returned delinquent, the supervisor shall have power, and he is hereby required to collect the same, in the name of his township, from such treasurer or his sureties, together with interest and charges.

History:—C. L. '97, 3935.

Removal of timber from lands bid to state.

SEC. 113. (4112) It shall be unlawful for any person to cut or remove any logs, wood or timber from any lands sold and bid in by the State of Michigan, for the non-payment of taxes, while the State remains the owner of such lands or the holder of any tax lien thereon by virtue of such sale, and if any person shall cut, or remove such logs, wood, or timber from such lands during the time aforesaid, the Auditor General or his deputy shall issue a warrant under his hand, in the name of the people of the State of Michigan, directed to the sheriff of the county where such lands are situated, giving therein a description of such lands, the amount of such taxes with interest and charges thereon, then remaining unpaid, commanding such sheriff forthwith to seize such logs, wood, or timber, wherever the same may be found in any county in this State, and to sell the same, or a sufficient quantity thereof, to satisfy such taxes, with the interest and charges thereon and the cost of such seizure and sale. The sheriff shall receive such warrant and execute the same as therein directed, as in case of levy and sale on

Warrant of Auditor General for seizure, etc.

Duties of sheriff.

Return of doings.

Examination of lands by trespass agent.

Report of trespass.

Duty of county and township officers.

execution, and make return thereof with his doings thereon to the Auditor General, within sixty days after the receipt of the same, and pay over all money collected thereon to the State Treasurer. The Auditor General may furnish the State trespass agent with lists or plats of land bid in by the State and remaining unpaid, and the said trespass agent shall examine such lands and promptly report to the Auditor General all violations of the provisions of this section. The sheriff and county treasurer of each county are hereby directed to report all such trespass, prohibited by this section, to the Auditor General, immediately, whenever they shall have knowledge of the same, and any county or township officer having knowledge of such trespass shall report the facts to the sheriff or county treasurer.

History:—Am. 1895, p. 299, Act 154, Eff. Aug. 30;—C. L. '97, 3936.

Commissioner of State Land Office authorized to adjust trespass.—492 and 576 C. L. '15. Prosecuting Attorney to report trespass to Commissioner State Land Office.—581 C. L. '15. Penalty for trespass.—576; 579; 14632; 15329; 15532; 15417-8 C. L. '15. Trespass on public lands.—13229n, 15556-8 C. L. '15. Removal of buildings, fences, etc., suit for.—12929n C. L. '15. Action for trespass. 13377n-14465r. (See St. John v. Antrim Iron Co., 122 M. 68); 13229n; 12323n; 15562 C. L. '15

Statutory citations above include some which are applicable to lands purchased for taxes as well as those solely applicable to public lands.

The right of action for a trespass committed on State tax land continues in the State, notwithstanding the fact that after the trespass was committed the State transferred its title to the trespasser.—Blake v. Grondin, 141 M. 104.

The timber cut from State tax land and the cause of action resulting from said cutting belongs not to the original owner but to the State.—Morse v. Auditor General, 143 M. 610.

Where one acting in good faith intentionally intermingles property of his own with that of another of equal value and quality he does not lose title to the whole, but each party will be given his due proportion of the whole.—Keweenaw Association v. O'Neil, 120 M. 270. As to the fraudulent admixture of logs, see Stephenson v. Little, 10 M. 433.

It is the general rule that a defendant owning the title to land cannot be found guilty of trespass for peaceably entering upon the same.—Vetterly v. McNeal, 129 M. 507.

Act 34, Laws of 1901, amends Act 223, 1889, providing for injunction to be issued to restrain waste on current taxes when they become a lien. See also Secs. 155, 156 and 157.

On a bill filed to enjoin a defendant from removing a house built partly on land claimed by complainant and partly on land owned and occupied by defendant, the boundary line being in dispute, the only decree that can be rendered is one restraining waste, pending a determination of the title in an action of ejectment.—Cromwell v. Hughes, 144 M. 3.

Act No. 210 of the Public Acts of 1903 provides for a penalty for removing from any State lands, logs, ties, wood, bark, poles, shingle bolts, shrubbery or any timber whatever, or the removal of any buildings, fences, improvements or other property.

A trespasser cutting timber on lands the title to which is in the State under a valid tax sale, does not by the purchase of the land from the State obtain title to the timber cut before he purchased the land.—Allen v. Cowley, 128 M. 530; Hickey v. Rutledge, 136 M. 128.

The whole theory of taxing laws is to vest the title in the State as between itself and the original owner, but for the State, county and township, in proportion to the several taxes due to each.

Moneys collected for trespass committed upon State tax lands and State lands belong to the State, county and township in proportion to the amount of taxes due each at the time such lands were deeded to the State, or became State tax homestead lands.—Alcona Supervisors v. Auditor General, 136 M. 130.

Act 226 of the Laws of 1903, providing for the appointment of trespass agent, makes it the duty of such agent to watch all State lands, including the Tax Homestead and State Tax Lands.

This section does not apply to lands bid to the State on which the period of redemption has not as yet expired:—Broadwell v. Walker, 216 M. 210.

No injunction to stay collection.

SEC. 114. (4113) No injunction shall issue to stay proceedings for the assessment or collection of taxes under this act.

History:—C. L. '97, 3937.

Legislature may prescribe remedy by injunction to restrain collection of taxes where it has provided complete remedy at law to recover taxes illegally assessed or collected.—Eddy v. Township of Lee, 73 M. 123; Canal & Ry. Co. v. Auditor General, 79 M. 351.

Injunction to restrain waste.

Sec. 115. (4114) The holder of any certificate of sale shall, at any time after its issue, have the right to an injunction to restrain waste on any of the lands described in such certificate where such lands are valuable for timber, and the circuit court in chancery of the county in which such lands are situated shall have jurisdiction to grant such relief on bill or petition, where no other relief is sought.

History:—C. L. '97, 3938.

A trespass to land which is of a continuing nature, the constant recurrence of which renders the remedy at law inadequate by multiplicity of suits, may be relieved against by injunction.—Davies v. Township of Frankenlust, 118 M. 494; Hall v. Nester, 122 M. 141.

In an action for waste purchaser must prove that the acts complained of were injuries to the freehold.—Ward v. Carp River Iron Co., 47 M. 65. See further as to what constitutes waste.

See Blackwood v. Van Vliet, 11 M. 252.

Wilfully erroneous assessment.

Penalty.

Wilfully erroneous review.

Penalty.

Sec. 116. (4115) If any supervisor or other assessing officer of any township or city shall wilfully assess any property at more or less than what he believes to be its true cash value, he shall be guilty of a misdemeanor, and on conviction thereof he shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding three hundred dollars, at the discretion of the court. If any board whose duty it is to review the assessment of an assessing officer shall wilfully assess property at more or less than its cash value, the member voting in favor of such action shall severally be guilty of a misdemeanor and on convicttion shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding three hundred dollars, at the discretion of the court.

History:—C. L. '97, 3939.

Failure to record payment.

Penalty.

Sec. 117. (4116) If any officer to whom any tax is paid shall fail to make proper entry and return of such payment, he shall be liable to any person injured, for the full amount of the injury, and if such failure is wilful he shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by imprisonment in the county jail not more than six months or by fine not more than three hundred dollars.

History:—C. L. '97, 3940.

See People v. Bringard, 39 M. 22.

Wilful false swearing perjury.

Sec. 118. (4117) Any person who, under any of the proceedings required or permitted by this act shall wilfully swear falsely, shall be guilty of perjury and subject to its penalties.

History;—C. L. '97, 3941.

Official neglect.

Penalty.

Sec. 119. (4118) Any officer who shall wilfully neglect, or refuse to perform any of the duties imposed upon him by this act shall, when no other provision is made herein, be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding three hundred dollars, in the discretion of the court, and shall be liable to any person injured thereby to the full extent of the injury sustained.

History:—C. L. '97, 3942.
The last clause of this section places a personal liability upon the assessor in the event of any wilful neglect or refusal to perform his duties, whenever such neglect or refusal shall occasion loss or injury to any person.

Names of bank stockholders filed with county clerk.

SEC. 120. (4119) The cashier of every bank and the secretary of every trust, deposit or security company, the capital of which is represented by shares of stock, shall on the second Monday of April in each year, file in the office of the county clerk of the county where the bank or trust, deposit or security company is located, a list of the names of the stockholders, the amount of stock held by each on the day said report is made, and their respective residences. Immediately after the filing of such statement, the county clerk shall notify the supervisor of each township of the name of each person, if any, residing in his township holding shares of stock in any such bank, or trust, deposit or security company, and of the amount thereof as shown by such statement. If the cashier of any bank or the secretary of any trust, deposit or security company shall wilfully neglect or refuse to make and file in the office of the county clerk a list of the names of stockholders, the amount of stock held by each, and their respective residences, as provided in this act, or shall wilfully make and file any false entry in any such list, he shall be guilty of a misdemeanor, and upon conviction he shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not to exceed a period of six months, or by both such fine and imprisonment in the discretion of the court. If the president, secretary, or chief accounting officer of any corporation, company or association, or any representative thereof, shall wilfully neglect or refuse, or shall make and verify any false statement to any assessing officer, the intention or effect of which may be to escape taxation, such person shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail not to exceed a period of six months, or by both such fine and imprisonment in the discretion of the court. And any person who shall wilfully make and verify any such statement with the effect or intention to evade taxation, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed three hundred dollars or by imprisonment in the county jail not to exceed a period of six months or by both such fine and imprisonment in the discretion of the court.

Refusal to file, etc., misdemeanor.

Penalty.

History:—Am. 1895, p. 299, Act 154, Eff. Aug. 30;—C. L. '97, 3943;—Am. 1923, p. 256, Act 163, Eff. Aug. 30.
Report of stockholders.—See also 7983, C. L. '15.

Auditor General to publish tax laws.

SEC. 121. (4120) The Auditor General shall, from time to time, as he may deem necessary, cause to be printed at the expense of the State, a sufficient number of copies of this act, and such other laws in force relating to the taxation of property, as may be requisite to a full understanding of all the duties of assessing officer, or other State, county or township officers, with proper side notes, index and forms of proceedings, as may be necessary and proper; to furnish one copy to each supervisor, assessor, township clerk and county clerk, and three copies to each county treasurer. Each copy shall be marked "State property." He shall transmit to each county treasurer, at the expense of the county, a sufficient number of copies for each county, and every county treasurer shall immediately furnish to the township clerk of each township five copies, to be distributed by him to the officers entitled thereto. The Board of State Auditors shall examine and audit all properly certified claims for services rendered and expenses incurred under the provisions of sections 121, 127 and 128 of this act.

Distribution.

Board of State Auditors to audit certain claims.

History:—C. L. '97, 3944.
Auditor General to draw up and cause to be published instructions for the government of officers concerned in the collection of the revenue; which shall be binding upon such officers.—121 C. L. '15; and shall publish and distribute all pamphlets of the general tax law or of all laws relating to the revenues of the State as may be required.—Sec. 2, Act 44 of 1899.

Sec. 122. (4121) It shall be the duty of the Auditor General to provide and furnish in due season to the several county clerks and treasurers, at the expense of the State, all forms, blanks and record books made necessary by this act, and it shall be the duty of said county clerks and treasurers to use the blanks furnished by the State or approved by the Auditor General, and no others.

Blanks, etc., furnished by Auditor General.

History:—C. L. '97, 3945;—Am. 1913, p. 52, Act 33, Eff. Aug. 14.

Sec. 123. (4122) In order to perfect the records of taxes in the office of the Auditor General, and for the other purposes of this act, it shall be the duty of each county treasurer, immediately after the passage of this act, to make a full and complete transcript and return of all lands returned as delinquent for taxes for the years one thousand eight hundred and ninety-one and one thousand eight hundred and ninety-two, not already made, and a full and complete transcript of all moneys received, sales made and recorded, and all other things had or done under the provisions of act number two hundred of the public acts of eighteen hundred and ninety-one, entitled "An act to provide for the assessment of property and the levy of taxes thereon and for the collection of taxes heretofore and hereafter levied, and to repeal act number one hundred and ninety-five of the session laws of one thousand eight hundred and eighty-nine, except as provided in this act, and all other acts and parts of acts in anywise contravening any of the provisions of this act," approved July seventh, eighteen hundred and ninety-one. Upon the receipt of such transcripts and lists, the Auditor General shall cause them to be recorded in his office, in the proper books therefor, as such delinquent tax lands were by law or custom recorded prior to the passage of such act above mentioned.

Return of taxes of 1891 and 1892 to Auditor General.

Return of doings of county treasurers.

Record of returns.

Copies of records, etc.

The Auditor General shall require of each of the county treasurers of this State, and such county treasurers are hereby directed to furnish on demand copies of all records, decrees, certificates, redemptions, sales, minutes and information to enable the Auditor General to perfect such tax records in his office. A like demand may be made on each of the county clerks in this State and shall in like manner be complied with by each of such clerks. Each county treasurer and county clerk shall receive such reasonable compensation for the extra services required by this section as may be allowed by the board of supervisors, to be paid out of the county treasury.

Duties of county clerks.

Supervisors to compensate treasurer and clerk.

History:—C. L. '97, 3946.

Duties of Auditor General.

Sec. 124. (4123) From and after the passage of this act the Auditor General shall perform all the duties in relation to taxes levied, assessed, collected and returned delinquent, sold or to be sold as required by this act: *Provided,* It shall not be necessary for him to sell or order resold, advertise or readvertise, and revise or renew any act done by any officer or court under and by virtue of the said act heretofore mentioned in the preceding section, but all such proceedings and acts shall be recognized and held to be legal and valid under this act, subject, however, to the provisions of section 98 of this act. In all cases where deeds have been issued by county treasurers, any such deeds shall be valid and of such force and effect as if issued by the Auditor General, but the Auditor General may cancel any deed so made by any county treasurer, on the request of the holder thereof, and issue a new deed signed by the Auditor General or his deputy as in this act provided. And for all lands advertised and sold by any county treasurer under the authority granted in said act before mentioned, such advertisement and sale shall be held legal and valid, but all such proceedings and all proceedings necessary to be had hereafter in relation to such lands and taxes shall be had under the provisions of this act.

Not required to revise acts done under 1891 law.

County treasurer's deeds valid.

Cancellation and reissue of deeds.

Sale under 1891 law valid.

All future proceedings to be under this act.

History:—Am. 1895, p. 300, Act 154, Eff. Aug. 30;—C. L. '97, 3947.

The action of the head of an executive department of the State is not judicial and therefore not subject to direct proceedings for review.—Ambler v. Auditor General, 38 M. 746.

Section validates deed executed by county treasurer under Act 200 of 1891 for lands assessed under law 1889, the title to which was in the State at the time of sale by county treasurer.—Hoffman v. Pack, Woods Co., 123 M. 74.

Vested rights undisturbed.

Sec. 125. (4124) All rights which may have accrued to any person, as well as all rights which have accrued or become vested in any individual, corporation, municipality, or the State, under any of the heretofore existing tax laws of the State which have been amended, modified, changed or repealed, shall not be affected, changed or destroyed, but the same shall remain in force, subject to review and enforcement in the courts of this State, and for the completion of all proceedings heretofore begun for the collection of taxes or the enforcement of all the requirements of such laws.

History:—C. L. '97, 3948.

Act 200, Public Acts of 1891, repealed.

SEC. 126. (4125) That act number two hundred of the public acts of eighteen hundred and ninety one, entitled "An act to provide for the assessment of property and the levy of taxes thereon, and for the collection of taxes heretofore and hereafter levied, and to repeal act number one hundred and ninety-five of the session laws of one thousand eight hundred and eighty-nine, except as provided in this act, and all other acts and parts of acts in anywise contravening any of the provisions of this act," approved July seventh, eighteen hundred and ninety one, and all other acts and parts of acts in anywise contravening any of the provisions of this act, be and the same is hereby repealed: *Provided*, That such repeal shall not destroy or affect any rights which may have accrued or may hereafter accrue under such acts or parts of acts while the same were in force.

Contravening acts repealed.

Proviso.

History:—Sec. 1 of Act 142 of 1905, also repeals Act 200 of 1891.
See Blackwood v. Van Vliet, 30 M. 118.

INSPECTION AND DISPOSITION OF STATE TAX LANDS.

Certain state tax lands deemed abandoned.

SEC. 127. (4126) Lands delinquent for taxes for any five years, where said lands have been sold and bid off to the State for the taxes of one or more of the said years, and then so held, and no application having been made to pay, purchase or redeem the said lands for said taxes and no action pending to set aside such taxes or to remove the cloud occasioned thereby, shall, within the meaning of this act, be deemed abandoned lands, unless such lands are actually occupied by the person having the record title thereto. Any lands delinquent for taxes for a period of five or more years, and said lands having been sold and bid in by the State and held by the State for the taxes of any of said years, and no application having been made to pay, redeem or purchase the same, and no suit pending to set aside said taxes or remove the cloud from the title occasioned thereby, shall be subject to the provisions of this section. Whenever it shall appear by the records in the Auditor General's Office that any lands are delinquent for taxes for five years or more and that said lands have been bid off to the State one or more times by reason of such delinquent taxes, and that the time of redemption of such sale or sales has expired and that no application has been made to pay, to redeem or purchase the same, and it shall appear that no action is pending in the circuit court of the county where said lands are situated to set aside the taxes or remove the cloud on the title occasioned thereby, the title to the State shall be deemed absolute in and to said lands; and it shall be the duty of the Auditor General and the Commissioner of the State Land Office to cause an examination of such lands to be made as soon as practicable, to ascertain their value and if abandoned. Upon the examiner filing a certificate as to said examination and the occupancy of said premises, and the certificate of the county clerk of the county where said lands are situated, in the office of the Auditor General, showing that no suit is pending in said county to

Title of state to such lands absolute.

Examination of lands.

Examiner's and county clerk's certificate.

set aside any of said taxes or remove the cloud occasioned thereby, the Auditor General and the Commissioner of the State Land Office shall determine what lands so examined come within the provisions of this section, and record their determination in a book to be kept in the office of the Auditor General for that purpose. The finding and determination of the Auditor General and the Commissioner of the State Land Office shall show:

Determination by Auditor General and Commissioner of State Land Office.

What to show.

First, A description of said lands;

Second, The years for which they have been returned delinquent for taxes;

Third, The time or times bid off to the State, and the taxes for which said bid was made;

Fourth, Whether said lands are occupied or abandoned;

Fifth, Whether or not any suit is pending in the county where said lands are situated to set aside the taxes, or any of them, or to remove the cloud occasioned thereby.

Limitation of contest.

The determination of the Auditor General and Commissioner of the State Land Office in that regard shall be deemed to be conclusive as to the facts therein stated, unless suit is instituted to vacate the same within six months, as hereinafter provided. Within ninety days after such determination the Auditor General shall make a transfer by deed of all lands so determined by the Auditor General and said Commissioner of the State Land Office to come within the provisions of this section to the State of Michigan as to an individual, as provided in section seventy-two of this act so far as said section is applicable. Said deed or deeds shall be delivered to the Commissioner of the State Land Office, who, after having said deed or deeds recorded in the register of deeds office, of the county where the lands are situated, shall file the same in his office. Upon the execution and delivery of said deed or deeds to the Commissioner of the State Land Office, said commissioner shall hold said lands as State lands, subject to the provisions hereinafter contained. And no suit shall be instituted to vacate, set aside or annul the said determination of the said Auditor General and the Commissioner of the State Land Office made as aforesaid unless instituted within six months after the determination aforesaid. Any person desiring to file a bill or institute a suit to vacate the findings of the Auditor General and Commissioner of the State Land Office, as provided in this section, shall first pay to the Auditor General all delinquent taxes returned to the Auditor General on the lands in question, together with all interests, costs and charges, and shall purchase and pay for all bids and titles held by the State to such lands by paying therefor the amount bid by the State and all interest and legal charges thereon, as provided in section eighty-four of this act. The money so received by the Auditor General shall be paid into the general fund of the State and in case the determination of the Auditor General and Commissioner of the State Land Office should be set aside and held for naught, and the taxes, or any portion thereof, shall be adjudged invalid for any of the reasons

Auditor General's deed to state.

Recording and filing.

Suit to vacate.

Payment of taxes condition precedent.

Disposition of money paid.

set forth in section seventy six of this act, then in such case the Auditor General shall return to the person entitled thereto such taxes, or any portion thereof, as shall be so adjudged invalid for the reasons aforesaid, and in case the title is held valid the money so received shall be divided between the State, county and township pro rata according to the taxes paid, the same as in other cases. Any suit instituted for the purpose of setting aside the determination aforesaid may be commenced in the circuit court of the county of Ingham. It is hereby made the duty of the county clerks of the several counties of this State, on inquiries by the Auditor General, to furnish to said Auditor General a certificate showing whether or not any such suit is pending in the circuit court of the counties, as above referred to, relating to any lands described and referred to in the inquiry of the Auditor General.

Suit in Ingham county.

Duty of county clerks.

History:—Am. 1895, p. 301, Act 154, Eff. Aug. 30;—C. L. '97, 3949;—Am. 1899, p. 151, Act 107, Imd. Eff. June 8;—See P. A. 1903, p. 110, Act 84, Eff. Sept. 17, Sec. 4161 C. L. '15.

Lands held for the last three consecutive sales under tax law of '89, subject to provisions of this section if also bid to the State at sale of December, 1893, under this act.—Conn. M. L. Ins. Co. v. Wood, 115 M. 444.

To constitute a continued possession it is only necessary that it should have been such as the owner of that kind of real estate (remote pine lands) ordinarily exercises.—Safford v. Basto, 4 M. 406.

Where delinquent tax lands are transferred to the State by the Auditor General in pursuance of Sec. 127, Act 107 of 1899, as "barren, swamp or worthless lands," the joint action of the Auditor General and Commissioner of the State Land Office *cannot be set aside* on a showing made by the owner of the title that such lands were not barren, swamp, worthless or abandoned.—Semer v. Wildey et al., 133 M. 569.

The Auditor General deeded certain delinquent tax lands to the State as tax homestead land and these lands were omitted from the assessment rolls the following year. Respondent claimed that the action in deeding the lands to the State as tax homestead lands was void, and by reason of those lands being omitted from the assessment rolls it was compelled to pay more than its share of the tax levy. *Held,* (1) That the title being in the State, the State could properly exempt the land from assessment, and that the omission of the land from assessment by the officer of the township, acting in good faith under instructions from the proper State officer, did not vitiate the tax levy. (2) That the respondent cannot in this proceeding raise the question of the validity of the decree under which the State obtained title.—Auditor General v. Sage Land & Improvement Co., 129 M. 182.

The owner of the land held by the State for unpaid taxes cannot set up that a subsequent sale to the State for unpaid taxes is void by reason of the failure of the State to make the land state homestead land.—Auditor General v. Carpenter, 138 M. 669.

Where land is deeded to the State by the Auditor General as tax homestead land, the State does not become a "purchaser" of the land deeded within the meaning of the provision of the tax law limiting the time within which the holder of the record title may bring action for a reconveyance.—Morse v. Auditor General, 143 M. 610.

The Auditor General cannot deed tax lands to the State as tax homestead lands before the expiration of the time permitted for redemption by the owner. —Morse v. Auditor General, 143 M. 610.

Section 127 relating to tax homestead lands, does not place lands actually occupied upon the homestead lists.

Where land occupied as one parcel is assessed in two descriptions making up the lot, that portion of one of the descriptions not occupied by the house is subject to entry as tax homestead land.—Meagher v. Dumas et al., 143 M. 639.

The power of the Auditor General to cancel under Section 98 does not apply to deeds issued under the homestead provisions of the tax law.—Commissioner State Land Office v. Auditor General, 131 M. 147; Jackson, Lansing & Saginaw R. R. Co. v. Solomon Lumber Co., 146 M. 204.

That delay of more than ninety days in filing the deed after determination is made does not affect the conclusiveness of the determination that the lands are unoccupied.—Downer v. Richardson et al., 148 M. 597.

The determination is a classification of lands and in no sense a judicial act. —Griffin v. Kennedy et al., 148 M. 583.

Complainant's bill charged defendant L. with fraud in neglecting to pay taxes and procuring a homestead certificate to land leased to L. by complainant. The defendant set up that the proceedings to set aside the homestead certificate had not been commenced within the time provided for by statute, and that complainant's bill did not state payment of delinquent taxes by complainant. *Held,* That complainant's failure to pay the taxes is not a defense to the fraud charged against defendant L.—Dixon v. Ludington et al., 130 M. 269.

Lands deeded State under Sec. 127 "are not lands granted to the State, except in a most technical sense for, though the Auditor General does execute a deed to the State, he holds them in the first instance for the State, which has purchased them for delinquent taxes."—Gibson v. Land Commissioner, 121 M. 49.

Act 84, Laws 1903. Sec. 4161 C. L. 1915.

AN ACT to define and perfect the title to certain State tax homestead lands and to limit the time for bringing actions in regard thereto.

The People of the State of Michigan enact:

SECTION 1. After the expiration of six months from and after the time when any deed made to the State under the provisions of section one hundred twenty-seven of act two hundred six of the public acts of eighteen hundred ninety-three, being the general tax law, and acts amendatory thereto, shall have been recorded in the office of the register of deeds for the county in which the land so deeded shall be situated, the title of the State in and to the same shall be deemed to be absolute and complete, and no suit or proceeding shall thereafter be instituted by any person claiming through the original or government title to set aside, vacate or annul the said deed or the title derived thereunder: *Provided,* That as to all lands heretofore deeded to the State under the provisions of said section one hundred twenty-seven of said act two hundred six of the public acts of eighteen hundred ninety-three, the title of the State thereto shall be deemed to be absolute and complete after a period of six months from the taking effect of this act, and no suit or proceeding shall thereafter be instituted by any person claiming through the original or government title to set aside, vacate or annul said deed or deeds or the title derived thereunder.

Where lands become homestead tax lands by the determination of the Auditor General and the Commissioner of State Land Office, the fact that the deed conveys the title by sections rather than by forties is not fatal to the title.—Jackson, Lansing & Saginaw Railroad Co. v. Solomon Lumber Co., 146 M. 204.

The determination of the Auditor General and the Commissioner of the State Land Office under the homestead provisions of the tax law, is not open to collateral attack after the expiration of six months from the determination.—Jackson, Lansing & Saginaw Railroad Co. v. Solomon Lumber Co., 146 M. 204.

A squatter's right to land by adverse possession by the sale of the land to the State for delinquent taxes as well as the rights of the original owner and the sale by the State to the original owner started a new chain of title against adverse possession, and claim of adverse possession must run for the statutory period from the beginning of the new title in order to give title by adverse possession.—Grand Rapids Trust Co. v. Doctor, 222 M. 249.

When lands deeded to state.

SEC. 127a. When a description of land is delinquent for taxes for any five years, and said lands have been sold and bid off to the State for taxes of one or more of said years and then so held and is otherwise subject to transfer by deed to the Public Domain Commission as provided by the preceding section, and said land or any part of the same is also held as State tax land or as a State bid for taxes of one or more years, with other descriptions of land that are not delinquent for the taxes of five or more years, the Auditor General may transfer by deed to the Public Domain Commission those particular parcels or descriptions of land that are otherwise subject to the provisions of section one hundred twenty-seven of this act.

History:—Added by Act 302 of 1917. Eff. Aug. 10.

Record of state tax deeds to state.

SEC. 128. (4127) The register of deeds for each county, upon delivery to him for that purpose of the deeds mentioned in the preceding section, shall record the same in his office and return such deeds to the Commissioner of the State Land Office. The register of deeds for recording such deeds shall receive the sum of fifty cents each from the State Treasurer out of any funds not otherwise appropriated, upon allowance of his account by the Board of State Auditors.

Duty and fees of register.

History:—C. L. '97, 3950;—Am. 1899, p. 153, Act 107, Imd. Eff. June 8.

Record in State Land Office.

Sec. 129. (4128) The Commissioner of the State Land Office shall make a list or entry in books in his office of such lands, separate from other State lands, showing the amount of taxes due and the years for which such lands were delinquent for taxes, the date of inspection and by whom inspected, and when deeded to the State; also when, to whom, and upon what conditions sold or disposed of, as hereinafter provided.

History:—C. L. '97, 3951.

Cancellation of certain taxes.

Notification of county treasurers by Auditor General.

County treasurer to notify supervisor.

Lands deeded state to be omitted from assessment roll.

Such land not taxable until sold.

Sec. 130. (4129) All taxes charged against such lands in the office of the Auditor General at the time they are deeded to the State shall be canceled, but no part of such taxes due to the township or county shall be charged to the State, but the State, county and township respectively shall bear the share of loss on such taxes that properly belongs to each, and the Auditor General shall make a list of all such lands in each county on or before the first day of March in each year and transmit such list to the county treasurer and the county treasurer shall serve, or cause to be served, upon the supervisor of the township in which such lands are located a copy of the list of lands in such townships as furnished to said treasurer by the Auditor General. Said supervisor shall produce said list to the board of review while in session for the purpose of reviewing the assessment roll. The supervisor shall omit and cancel from his assessment roll all said lands so deeded to the State, as shown by said list, and it shall also be the duty of the board of review, when in session, to compare the assessment roll of the township with the list so furnished by the county treasurer, as aforesaid, and correct all mistakes, and said lands so deeded as aforesaid shall not be liable to any assessment for any purpose until the same are again sold and deeded by the State, and notice of said sale and deeding given to the county treasurer by the Commissioner of the State Land Office, as hereinafter provided.

History:—C. L. '97, 3952;—Am. 1899, p. 153, Act 107, Imd. Eff. June 8.
Drain tax and special assessments cannot be laid on tax homestead lands, until after deed issues.—Opinion Attorney General, 1900, p. 161.
As to whether or not the provision in Sec. 130 that "all taxes charged against such lands in the office of the Auditor General at the time they are deeded to the State shall be cancelled", refers to assessments for special purposes, quere.—Case v. City of Saginaw, 196 M. 687.
Where lands are conveyed to the State by the Auditor General for delinquent taxes and no application for homesteading had been received and such land became subject to sale and was conveyed to the original owner whose interest therein had been completely cut off by deeding of the land to the State, his purchase from the State vested in him an absolute title.—Grand Rapids Trust Co. v. Doctor, 222 M. 249.

When deed executed to widow, etc.

Sec. 130-a. In case any homestead entryman shall die, or shall abandon and desert his wife for a period of one year, before making final proof of the fulfillment of such contract, his right and fee shall inure to the benefit of the widow or of such abandoned and deserted wife, who shall be entitled to complete the fulfillment of such contract, and upon establishing the fact of such death, or of such abandonment and desertion, and of the fulfillment of such contract, such widow or abandoned and deserted wife, as the case may be, shall be entitled to a deed of such lands from the state, which shall be executed in the same manner and shall be as valid for all purposes, as though such deed had been executed to the original entryman. All deeds heretofore executed to such widows or abandoned and deserted wives are hereby ratified and confirmed.

History:—Added 1923, p. 445, Act 277, Eff. Aug. 30.

When right, etc., inures to benefit of children.

SEC. 130-b. In case of the death of both the father and mother leaving a child or children, the right and fee of such parents in any such lands shall inure to the sole benefit of the minor child or children, if any, and if there be no minor child or children, then to the benefit of the other child or children of such deceased parents. The executor, administrator or guardian may at any time within two years of the death of the surviving parent, sell the lands for the benefit of such minor child or children, but for no other purpose, and such child or children or such purchaser shall acquire the absolute title to such lands and shall be entitled to a deed from the state upon making final proof of the fulfillment of the original entryman's contract, which shall be executed in the same manner, and shall be as valid for all purposes, as though such deed had been executed to the original entryman.

History:—Added 1923, p. 445, Act 277, Eff. Aug. 30.

Lands subject to homestead entry.

SEC. 131. (4130) All such lands shall be held by the Commissioner of the State Land Office subject to entry as homestead lands unless withheld and reserved in the manner following: The Commissioner of the State Land Office and

How withheld.

the Auditor General, acting jointly, may reserve and withhold from entry under the homestead right such portion of the lands deeded by the Auditor General to the State under section one hundred twenty-seven of the act number two hundred six of the Public Acts of eighteen hundred ninety-three and acts amendatory thereto as, in their opinion, may not be advantageous to open for homestead, and they may withhold and reserve such land from entry for so long a time as in their opinion will best subserve the interest of the

Minimum price, how fixed.

State. The said Land Commissioner and Auditor General shall affix a minimum price upon all land so reserved and withheld, or which may hereafter be reserved and withheld.

Offer for sale.

All such lands withheld from homestead entry shall be offered for sale by said Land Commissioner at prices to be

Proviso, regulation of sale.

discretionary with him: *Provided*, That in the sale of these lands so reserved and withheld, the same rules and regulations as provided in act number twenty-one of the Public Acts of eighteen hundred seventy-three, entitled "An act to require the Commissioner of the State Land Office to give public notice of the restoration of reserved and forfeited State lands to market" shall govern, and no bid shall be accepted for less than the minimum price affixed by such

Land Commissioner and the Auditor General. The proceeds from any such sale shall be accounted for to the State, county and township in which said lands are situated pro rata according to their several interests therein, arising from the non-payment of taxes thereon as such interest shall appear in the office of the Auditor General: *Provided,* That in case any lands of the United States government, any corporation, individual or individuals, as provided by act one hundred ninety-three of the Public Acts of nineteen hundred eleven, and located in another county, shall thereafter be sold, the proceeds therefrom shall be accounted for to the State, county and township in which the lands thus transferred in exchange therefor are located, pro rata, according with their several interests therein arising from the non-payment of taxes, as such interest shall appear in the office of the Auditor General. If any person shall apply for any lands subject to entry as homestead, or any part thereof not to exceed in quantity one hundred sixty acres, or if within the limits of the plat of any city or village, not to exceed the contiguous lands in any one block, or two contiguous parcels of unplatted land, for any one person so applying, and shall file an affidavit that such person desires such lands for actual settlement, for the purpose of a homestead, the Commissioner of the State Land Office shall, if in his judgment, the application is made in good faith, issue a certificate to such person for such land upon the payment of the sum of ten cents per acre, conditioned that such person shall reside upon said lands for the period of five years and improve the same: *Provided,* That in case such lands are included in the plat of any city or village or of any subdivision of or addition to any city or village, the land that may be taken as a homestead by any person shall be contiguous and shall not exceed one block, according to such plat, or two contiguous unplatted parcels, except where such city or village lands have been bid to the State by government description, in which case no person shall receive a certificate for more than one government description, and in the case of any such lands the amount paid therefor shall be the same for any parcel less than one acre as for one acre as provided in this section. At the expiration of such five years such person shall be entitled to make and shall make proof of the fulfillment of such contract within three months in such manner as the said Commissioner of the State Land Office may prescribe. And when such proof is made to the satisfaction of said Commissioner of the State Land Office such person shall be entitled to a deed of such land from the State, executed by the Commissioner of the State Land Office on behalf of the State, which deed shall be in such form as the Commissioner of the State Land Office shall determine; the said deed shall be witnessed and acknowledged, and shall be entitled to record in the office of the register of deeds in the proper county, in the same manner and with like effect as other deeds are duly witnessed, acknowledged and certified.

Proceeds, how accounted for.

Proviso, sale of certain lands.

Application for lands.

Affidavit.

Certificate.

Condition.

Proviso, platted lands.

Final proof.

Deeds.

Title to lands.

State to protect.

Such deed shall convey an absolute title to the lands sold, and shall be conclusive evidence of title in fee in the grantee, and it shall be the duty of the State of Michigan to defend and prosecute all suits brought to protect such title, and the State shall pay all costs adjudged against the homesteader.

Rules subject to.

Such homestead lands shall be subject to the same rules and regulations now in force as to other homestead lands not inconsistent with the provisions of this act.

Further proviso, construction of section.

Further proviso, fee-simple title.

Persons who have heretofore taken up homestead lands under this section, having made the first payment required by this section, and having resided upon and improved the same since they entered thereupon, are hereby relieved from making any further payments to the State: *Provided further,* That nothing in this section shall be construed to entitle any person or persons who have heretofore entered such lands to the return of any part of the payments heretofore made by them: And *Provided further,* That any person who has purchased and entered into possession of any lands as a homestead, under and by virtue of the provisions of this section, as originally passed, or as amended when said lands had been bid off to the State and were held by the State for the taxes of one or more years, and said lands were delinquent for taxes for three or more years, shall, on performing the other conditions of said section, as amended, receive a deed therefor, as herein provided, and shall be deemed to have a good, sufficient fee-simple title to said premises, to all intents and purposes the same as though said lands had been bid off to the State for a consecutive period of more than three years, as originally provided in section one hundred twenty-seven of said act.

Ejectment, limitations of.

And in all cases where the lands have been taken as a homestead as set forth in last foregoing proviso, all actions of ejectment or to recover possession of said lands or to set aside the title of such homesteader by any person, firm or corporation claiming the original or government title, shall be commenced within six months after this act shall take effect, and not afterwards.

Delinquent taxes to be paid.

Said person, firm or corporation shall before commencing such proceedings pay to the Auditor General all delinquent taxes returned to the Auditor General on the lands in question, together with all interest, costs and charges, and shall purchase and pay for all bids and titles held by the State to such lands by paying therefor the amount bid by the State and all interest and legal charges thereon, as provided in section eighty-four of this act.

Deposit of money received.

Return of money.

The money so received by the Auditor General shall be deposited in the State Treasury to the credit of the State, county and township wherein said lands are situated, in proportion to the amount of taxes due to the State, county and township upon said lands; and in case the State's title to the land shall be declared valid, then the taxes and moneys so paid by the person, firm or corporation instituting such suit of ejectment shall be returned upon the order of the Auditor General, less the costs of such suit.

State to defend, etc.

And it shall be the duty of the State of Michigan to prosecute and defend suits and pay costs as herein provided: And *Provided further*, That after the said land has been so held by the State of Michigan subject to entry as homestead land, for three years from April one, eighteen hundred ninety-nine, for all land already deeded to the State and for three years or more from the date of the deed for all land hereafter deeded to the State under section one hundred twenty-seven aforesaid, and where no application has been made to homestead certain descriptions of said lands, then and in such case said lands concerning which there has been no application to homestead shall be open to sale and purchase as hereinafter provided. In case written application shall be made to the Commissioner of the State Land Office to purchase any description of said lands so held by the State for more than three years, as herein stated, it shall then be the duty of the Commissioner of the State Land Office to examine and appraise the value of the land so offered to be purchased as aforesaid. The Commissioner of the State Land Office shall make a record of said appraisement in a book to be kept in his office for that purpose. After such examination and appraisement, if there has been no application to homestead said lands, it shall be competent and the Commissioner of the State Land Office is hereby authorized to sell such description of land to any person so applying for the purchase thereof, but at not less than the appraised valuation, and he shall not be authorized to sell to any one person over two hundred and forty acres of said land. In case of the sale of said lands, the Commissioner of the State Land Office shall execute and deliver to the purchaser a deed in such form as he may determine, which shall convey to the purchaser the same interest as is provided for a deed where said lands have been homesteaded as provided in this section. All moneys received by the Commissioner of the State Land Office upon the sale of said lands as provided under the last above proviso shall by him be deposited in the State Treasury to the credit of the State, county and township wherein said lands are situated in proportion to the amount of taxes due to the State, county and township upon the land so sold by the Commissioner of the State Land Office at the time of the conveyance to the State of such lands.

Further proviso.
When lands open to sale.
Appraisal of land.
Record of appraisal.
Sale of land.
Limit of amount sold.
Deed.
Interest conveyed.
Disposition of moneys.

History:—Am. 1897, p. 329, Act 240, Eff. Aug. 30;—C. L. '97, 3953;—Am. 1899, p. 154, Act 107, Imd. Eff. June 8;—Am. 1901, p. 188, Act 141, Imd. Eff. May 17;—Am. 1915, p. 351, Act 208, Eff. Aug. 24.

See Sec. 4161 C. L. '15 as to title obtained under this section.

Improvements on any such lands held under certificate are assessable as personal property. See Sec. 132. For manner of assessment see Sec. 4.

A homestead entry vests no title, but gives a right of possession which may be perfected by continued occupancy and improvement, and if not so perfected reverts to the government. When perfected, title issued relates back to the time when entry was made.—F. & P. M. R. R. Co. v. Gordon, 41 M. 420. The retention of homestead rights though the party live elsewhere temporarily, is largely a matter of continuing intent, and is a fact to be proved like any other fact.—Hoffman v. Buschman, 95 M. 538. The duration of a man's absence from his own house does not of itself supply a conclusive presumption that he has abandoned it as a homestead.—Bunker v. Paquette, 37 M. 79.

Where land occupied as one parcel is assessed in two descriptions making up the lot, that portion of one of the descriptions not occupied by the house is subject to entry as tax homestead land.—Meagher v. Dumas et al., 143 M. 639.

Section 131 of the General Tax Law as amended by Act 107 of 1899 requiring the Commissioner of the State Land Office to issue a certificate to an applicant for homestead tax lands when "in his judgment the application is made in good faith," vests in the commissioner the power to determine the good faith of the application, and vests him with a discretion which will not be reviewed on mandamus.—Beebe v. Commissioner of State Land Office, 137 M. 48.

Section 131 of the tax law providing for payment by plaintiff to the Auditor General of all delinquent taxes as a condition precedent to contesting a tax deed or sale by the State, does not apply to sales of tax homestead lands to others than homesteaders.—Morse v. Auditor General, 143 M. 610.

Homesteaders are protected by provisions of Section 73 and 104.—Conn. M. L. Ins. Co. v. Wood, 115 M. 444.

The limitation of time within which actions can be brought to recover possession or to set aside title of the homesteader is not confined to cases where the homesteader has obtained his deed, but is *retroactive* and covers any case where one claims under a valid homestead certificate.—Semer v. Wildey et al., 133 M. 569.

Summary proceedings before the circuit court commissioner will not lie to dispossess the original owner in possession of tax homestead lands, the remedy being in ejectment.—Duff v. Hall, 158 M. 513.

Title obtained by a homesteader may be confirmed in an action to quiet title as against the owner of the original title.—Olsen v. Williams, 172 M. 316; Olsen v. Williams, 185 M. 294.

Purchaser of tax homestead lands obtains an absolute title.—Beuthien v. Dillon, 160 M. 396.

Act 130, Laws of 1907.

AN ACT to provide for refunding to purchaser the price paid to the State on sale of land by the Commissioner of the State Land Office, under section one hundred thirty-one of act two hundred six of Public Acts of eighteen hundred ninety-three as amended by act one hundred forty-one of Public Acts of nineteen hundred one, in cases where the land sold did not belong to the class of lands liable to sale thereunder; for cancelling the conveyance of such lands to the State and restoring the tax liens thereon in favor of the State, which were erroneously cancelled.

SECTION 1. Any purchaser of land from the State of Michigan at any sale heretofore made, or that may be hereafter made by the Commissioner of the State Land Office under section one hundred thirty-one of act two hundred six of the Public Acts of eighteen hundred ninety-three, as amended by act one hundred forty-one of Public Acts of nineteen hundred one, may petition the Auditor General for a refund of the purchase price paid by him for such land in cases where the land so purchased did not belong to the class of lands liable to sale by such commissioner under said acts.

SEC. 2. In any case where it shall be shown by due proof, satisfactory to the Auditor General, that land purchased by the petitioner in manner set forth in paragraph one of this act was in fact actually occupied by the person having the record title thereto at the time of making and recording the determination relating thereto by the Auditor General and the Commissioner of the State Land Office under the provisions of act one hundred seven of Public Acts of eighteen hundred ninety-nine, and at the time such sale was in fact made to the petitioning purchaser, and that such purchaser never obtained possession or any beneficial use of such land and that he acquired no title thereto by such purchase for the reason that, at the date of such determination and such sale, the same was in fact occupied land, within the meaning of the statutes under which said sale was assumed to be made to such purchaser, the Auditor General shall cause the money paid therefor to the State of Michigan to be refunded to the purchaser with interest thereon at six per cent per annum.

SEC. 3. In case the deed executed and delivered to the petitioning purchaser by the Commissioner of the State Land Office on such sale shall not have been recorded, the same shall be delivered to the Auditor General for cancellation. If such deed has been recorded such petitioning purchaser shall execute and deliver to the Auditor General a release of said land to the State of Michigan and shall pay to the Auditor General the cost of recording the same in the office of the register of deeds of the proper county, and it shall be the duty of the Auditor General to cause such release to be so recorded.

SEC. 4. The Auditor General shall thereupon cancel the conveyance of said land made by the Auditor General to the State of Michigan by issuing a certificate of error in such proper legal form as may be required by the recording laws of the State of Michigan, and shall cause such certificate of error to be recorded in the office of the register of deeds of the proper county; and shall thereupon restore the tax liens in favor of the State of Michigan upon said land, which were erroneously cancelled at the time of the conveyance of the same to the State by the Auditor General, and said tax liens and the State bids thereon shall continue and shall have the same force and validity in every respect as if such erroneous cancellation had not been made.

SEC. 5. The State and county and all municipal bodies within such county shall respectively bear and be charged with their share of such refund in the same proportion that the proceeds of any sale cancelled under the provisions of this act was divided among or apportioned to said several bodies.

Deeds under this section convey an absolute title to the purchaser and a writ of assistance is the proper remedy to put the purchaser in possession of the land. —Chido v. Williams, 180 M. 367.

Purchasers under this section obtain an absolute title.—Darrow v. Minneapolis, St. Paul and Sault Ste. Marie R. R. Co., 188 M. 664.

Sec. 132. (4131) Lands held under such contract shall not be assessed until the State has given title to the occupant thereof, but improvements upon any such lands may be assessed as personal property, as in the case of other part paid lands.

Improvements assessable.

History:—C. L. '97, 3954.

Sec. 133. (4132) Whenever any person has perfected his title to any such lands, and a deed for the same has been issued by the State to such person, the Commissioner of the State Land Office shall so notify the county treasurer of the proper county that such lands are again and thereafter taxable as other lands. And they shall thereafter be assessed to such owner or occupant as other lands are assessed for all purposes. The county treasurer shall serve, or cause to be served upon the supervisor of each township in which such lands are located, on or before the fifteenth of April, a copy of the list of lands in his township, so furnished to said county treasurer by the Commissioner of the State Land Office. Said supervisor shall produce said list to the board of review, while in session, for the purpose of reviewing the assessment roll, and all such lands shall be placed upon the assessment roll: *Provided*, That if any homesteader upon any of the lands so deeded to the State and held for homestead entry shall surrender his certificate to the State for the benefit of any other applicant, and if such new applicant shall be granted a certificate, the said lands shall become subject to assessment as real estate after the expiration of five years from the original entry.

Notice of perfecting title.

When assessable.

List of lands to be furnished supervisor.

Proviso.

History:—C. L. '97, 3955;—Am. 1899, p. 156, Act 107, Imd. Eff. June 8;—Am. 1901, p. 62, Act 39, Imd. Eff. April 4.

Sec. 134. (4133) All moneys received by said commissioner for such lands shall be turned over to the State Treasurer and placed to the credit of the general fund, and all expenses incurred shall be audited by the Board of State Auditors and paid out of the general fund.

Proceeds.

Expenses.

History:—C. L. '97, 3956.

SUPPLEMENTARY.

Sec. 135. (4134) When any deed, land contract, plat of any town site, village or addition to any town site, village plat or city, or any other instrument for the conveyance of title to any real estate, is presented to the register of deeds of any county in this State for record or filing in his office, he shall require from the person presenting the same a certificate from the Auditor General, or from the county treasurer of the county, whether there are any tax liens or titles held by the State, or by any individual, against such piece or description of land sought to be conveyed by such instrument, and that all taxes due thereon have been paid for the five years preceding to the date of such instrument, and in

Recording and filing plats, deeds, etc.

Register to require certificate of payment of taxes, etc.

Noting certificate.

When register shall refuse to record.

Proviso.

Exceptions.

Penalty.

default of the presentation of such certificate he shall not record the same until such certificate is secured and presented. The register of deeds shall note the fact upon said deed that said certificate has or has not been presented to him when such instrument is presented for record, and in case the person presenting such instrument shall refuse to procure such certificate, he shall endorse that fact upon said instrument, over his official signature, and shall refuse to receive and record the same: *Provided,* That the provisions of this section shall not apply to the filing of any town or village plat for the purpose of incorporation, in so far as the land therein embraced is included in a plat already filed in the office of the register of deeds, or in so far as the description of lands therein is not changed by such plat, nor to the filing of any copy of the town, village or city plat in case the original plat filed in the office of such register of deeds has been lost or destroyed, nor to any sheriff's or commissioner's deed executed for the sale of lands under any proceeding in law, or by virtue of any decree of any of the courts of this State, nor to any deed of trust by any assignee, executor or corporation executed pursuant to any law of this State, nor to any quit claim deed or other conveyance containing no covenants of warranty; nor to any land patent executed by the President of the United States, or the Governor of this State, nor to any tax deed made by the Auditor General; nor to any deed executed by any railroad company conveying its right of way, provided such deed is accompanied by a certificate of the Auditor General showing that all specific taxes due from said railroad company have been paid, to and including the year in which such deed is executed. A violation of the provisions of this section by any register of deeds shall be deemed a misdemeanor, and upon conviction thereof he shall be fined not to exceed one hundred dollars, and he shall further be liable to the grantee of any instrument so recorded for the amount of damages sustained, to be recovered in an action for debt in any court of this State.

History:—Am. 1895, p. 301, Act 154, Eff. Aug. 30;—C. L. '97, 3957.

The evident purpose is to secure collection of taxes and the selection is not void under Sec. 20, Art IV, Constitution.—Van Husan v. Heames, 96 M. 504. Provisions of section not an infringement of property rights.—Id.

"That all taxes due thereon for the five years, etc., refers to taxes appearing upon the records of the Auditor General or county treasurer and the certificate must be made from the facts shown by those records. The instrument is entitled to record unless the certificate shows that all taxes have not been paid for the five years previous to its date; and sale to individuals is payment of the taxes for which the land was sold. The certificate need not specify the unpaid taxes nor the outstanding tax liens or titles, but only whether there are or are not any of each.—Van Husan v. Heames, 96 M. 504.

A certificate issued by the county treasurer under the provisions of Section 135 of the tax law, (Section 4134 C. L.) limits the certification to the preceding five years, and is not such a certificate as will authorize the auditor general to set aside a sale for taxes under Section 98 of the tax law for taxes of more than five years prior.—Welever v. Auditor General, 143 M. 311.

Fee of county treasurer for certificate, 15 cents, and five cents for each description.—2375 C. L. '15. Am. by Act 173 Laws of 1903. The charrge made by the Auditor General for certificate is fifty cents where the instrument does not contain more than two or three descriptions, but is governed by the provisions of Sec. 200 C. L. '15, and consequently where the instrument contains a large number of descriptions an additional charge is made.

The record of an instrument not by law entitled to record is notice to no one.—Dutton v. Ives, 5 M. 515; Galpin v. Abbott, 6 M. 17.

Blanks for county treasurers' certificates under this section are furnished by the Auditor General. It is frequently made evident that unapproved forms are used in some counties, in certain instances the certificate showing to more than that the taxes for the five years preceding the date of the instrument to be recorded have been paid. Such a certificate is not a compliance with the law and is frequently misleading. Sale for taxes to an individual is a payment of the tax, but this legal conclusion not being properly understood, a certificate showing no more than that the taxes are paid is understood by many as showing that the land has not been sold for taxes and often leads owners to neglect redemption, and consequently to a loss of their titles. The certificate should contain a description of the lands, should show whether or not "there are any tax liens or titles held by the State," should state affirmatively or negatively whether "there are any tax liens or titles held by any individual," and whether the taxes for the five years preceding the date of the instrument, are paid. If the taxes for the prescribed period are shown to be paid, the instrument is entitled to record, although there may be any number of tax titles held by individuals or by the State, provided none of the latter are for taxes of either of the five years preceding the date of the deed (not of the certificate). If asked for, and the statutory fee paid, the certificate should be issued, whether it shows the instrument to be reasonable or not.

A tax history cannot be substituted for this certificate, nor should the certificate recite what liens or taxes there may be against the land, such showing being provided for by the statutes providing for making tax histories and for the fees therefor.

Certificate should be filed with Register of Deeds. It need not be recorded but a certificate of the fact, as to presentation should be recorded with deed.—Opinion Attorney General, 1894, p. 123.

Purchase of lands held as state tax lands five years prior to 1890.

Certificate and deed.

Sale does not destroy lien for subsequent taxes.

Distribution of proceeds.

Cancellation of remaining taxes.

SEC. 136. Any person may purchase at any time prior to the first day of January, eighteen hundred and ninety-four, any parcel or description of delinquent tax lands, bid in and held by the State for five years prior to the annual tax sale in the year eighteen hundred and ninety, by paying to the State Treasurer or to any county treasurer not less than fifty per centum of the original taxes assessed thereon, and on all lands so held by the State for more than five years by paying not less than twenty-five per centum of the taxes originally assessed thereon, without any further charges therefor. Such purchaser shall receive a certificate as provided in section seventy-one of this act, and if said lands are not redeemed within one year after the date of said certificate shall be entitled to a deed from the Auditor General, as provided in case of lands sold under this act: *Provided*, That such sales so made and the certificates and deeds so given shall not be construed to remove or destroy any lien for taxes delinquent on such lands subsequent to the year eighteen hundred and ninety, but such taxes shall continue a lien, and the lands shall be sold in all respects as provided by law for each such subsequent years. The money received from sales made under this section shall be divided by the Auditor General, pro rata, between the township, county and State, as may belong to each, and shall be paid to each in the manner provided in this act. The Auditor General and the several county treasurers shall cancel on their books all the balance of taxes, charges and interest against the land so sold. The funds received from sales made under this section shall be paid into the general fund of the townships, county and State respectively.

History:—This section expired by its own limitation January 1, 1894.

Writs of assistance.

SEC. 137. (4135) The circuit court may, on application, put the purchaser of any lands sold under the provisions of this act in possession of the premises by writs of assistance.

History:—C. L. '97, 3958.

A demand for the possession of land made upon the agents of a corporation who are in the actual occupancy thereof is a sufficient foundation for an application for a writ of assistance against the corporation.—Ball v. Ridge Copper Co., 118 M. 7. Further as to writ of assistance see Sec. 70, 72, and Berkey v. Burchard, 119 M. 105.

Defendant purchased the property in question at a sale under a decree and was put in possession by a writ of assistance, to which writ plaintiff had filed answer that the decree was void for want of jurisdiction for reasons specifically set out, and which answer had been overruled. *Held,* that the validity of the decree was necessarily involved in the determination of the application for the writ of assistance; and hence, having been once submitted to a competent tribunal, plaintiff cannot retry it in ejectment, or discovering additional grounds on which to attack the jurisdiction. On an application for a writ of assistance it was competent for the opposing party to show that the decree on which such application was based was void for want of jurisdiction.—Peters v. Young et al., 122 M. 484.

The question of title cannot be tried through an application for writ of assistance.—Flint Land Co. v. Grand Rapids Terminal Railway, 147 M. 627.

Lands returned under prior tax laws.

SEC. 138. (4136) All lands which have been returned to the Auditor General as delinquent for taxes under the provisions of any general tax law in force prior to the passage of act two hundred of the public acts of eighteen hundred and ninety-one, and upon which the taxes are now or shall hereafter remain unpaid and which have not been sold for such taxes, and all lands so returned which have been heretofore sold for such delinquent taxes, and upon which the sale or sales so made shall have been or may hereafter be set aside by any court of competent jurisdiction, or shall have been or may hereafter be canceled, as provided by law, shall be subject to disposition, sale and redemption for the enforcement and collection of such tax liens in the method and manner provided in this act for the disposition sale and redemption of lands made subject to the provisions of this act by section sixty thereof: *Provided,* That nothing in this section contained shall be held to provide for the sale of any lands heretofore sold, if the sale thereof shall have been set aside or canceled for any reason affecting the validity of the taxes for which the land was sold: *Provided further,* That the court may in its discretion, where equity appears to so demand, enter decree of sale for the taxes for any year prior to eighteen hundred ninety-one, for the amount of the taxes found valid, without including the charge for interest thereon as provided by law: *And provided further,* That if tender of the amount assessed against any land for taxes of eighteen hundred ninety, or any prior year is made to the Auditor General, together with the collection fee and the charge for expenses as provided by law, at any time before the first day of the month preceding the month in which sale is ordered to be made, he shall issue receipt therefor, and cancel any State bid under which said land is held for said year and in such case the State, county and township shall bear the loss of accrued interest in proportion to their several interests therein.

Subject to sale under this act.

No sale for invalid taxes.

Court may decree sale for certain taxes without interest.

Payment of taxes of 1890 and prior years.

History:—Added 1899, p. 249, Act 169, Imd. Eff. June 23.

Payment under this section cannot for any purpose be deemed to be a payment as a condition of purchase, but is a voluntary payment, and can only be made to Auditor General.

See Auditor General v. O'Connor, 83 M. 464.

In proceedings to set aside decree for the sale of lands for unpaid taxes, the fact that irregularities may appear in the prior proceedings furnishes no obstacle to enforcing the State's lien for a tax equitably due to the State and chargeable to the lands sought to be subjected to State lien, provided that there is enough in the proceedings to show that the levy of said tax is authorized.—Auditor General v. Griffin, 140 M. 427.

The lien of the State for unpaid taxes is not lost by reason of the repeal of the law under which the lien was acquired and failure to immediately provide in a subsequent law for means of enforcing the law.—Auditor General v. Carpenter, 138 M. 669.

Cancellation of state bids and resale of lands held under invalid sales.

SEC. 139. (4137) The Auditor General may cause an examination to be made of the proceedings under which any lands bid to the State, and which have not been deeded by the Auditor General, were sold for delinquent taxes and bid to the State under the provisions of any general tax law, and if he shall find that such sales or the decrees under and by virtue of which such sales were made were in contravention of any provision of the laws in force at the time such decrees were entered or sales made, he may cancel such sales and proceed at any time to enforce the collection of such taxes under and in accordance with the provisions of this act, as in the case of lands returned or sold thereunder.

History:—Added 1899, p. 249, Act 169, Imd. Eff. June 23.

Lands sold on void decrees or void proceedings and sales cancelled are readvertised and subject solely to 138 and 139. The taxes cannot be paid at treasurer's office or statements made by county treasurer be binding upon Auditor General to correct if erroneous. The Auditor General had authority to include the land in subsequent petition.—Schulte v. Auditor General, 131 M. 676.

The requirement of the recording of the court's order under Sec. 62 is not jurisdictional so as to invalidate the tax sale on account of failure to record it at length.—Burns v. Ford, 124 M. 274.

SALES UNDER LAW OF 1885: Law prospective only and sale under it for taxes assessed under law 1882 is absolutely void.—Hall v. Perry, 72 M. 202; McNaughton v. Marin, 72 M. 276.

Interest on taxes assessed under drain law 1885.—Tile Co. v. Snyder, 93 M. 325; Bump v. Jepson, 106 M. 641.

Where the board of supervisors voted salaries to the sheriff and other officers, and such salaries were included in the tax levy in 1886, tax deeds based thereon are void.—Collins v. Rea, 127 M. 273.

A sale of real estate for the taxes of 1882 under the tax law of 1885, authorizing the sale of real estate for taxes, confers no title on the purchaser, as the act is prospective, and does not apply to taxes accrued prior to its passage.—Nowlen v. Hall, 128 M. 274.

SALES UNDER LAW 1889: As to service of subpoena, see Coyle v. O'Connor, 121 M. 596.

Under tax law of 1889 a failure to serve a subpoena upon the owner of lands returned as delinquent is not fatal to the jurisdiction of the court where the land is returned as "unknown" as the county obtains jurisdiction to enter a decree against such persons by publication of the notice required by the statute.—Tromble v. Hoffman, 130 M. 676.

SALES UNDER LAWS OF 1889 AND 1893: Land bid to State and so held cannot be included in subsequent proceedings for sale.—Connecticut Mutual Life Insurance Co. v. Wood, 115 M. 444 (applicable to sale 1890 to 1898, inclusive). But tax deed cannot be attacked in collateral proceedings on this ground.—Peninsular Savings Bank v. Ward, 118 M. 87. The provision under which the decision in Conn. M. L. Ins. Co. v. Wood was rendered was eliminated by the amendment of Sec. 61 in 1899.

Decree will be set aside and deed issued thereunder vacated where court failed to sit for the first five days after the day fixed for hearing (by Sec. 56, Law 1889, and Sec. 66, Law 1893, before amendment of 1899).—Youngs v. Clark, 120 M. 528. Where the fifth day falls on Sunday decree cannot be entered until the following Monday.—McGinley v. Calumet and Hecla Mining Co., 121 M. 88; Hall & Munson Co. v. Auditor General, 121 M. 88.

Decree entered in less than five days from date fixed for hearing is void as to those who did not appear or otherwise waive right to apply for further time.—Wait v. McMillan, 121 M. 95.

Where (under Sec. 66 before amendment of 1899) day fixed for hearing was September 24 and judge was not present on that day, but sent order to adjourn to September 30th and it was done and court was in session on the 30th and then adjourned to October 4, when decree was entered: *Held*, that court did not acquire jurisdiction to enter decree, owner being entitled to five court days (not necessarily consecutive) in which he can make it appear to the court that he has been prevented from filing objections.—Miller v. Brown, 122 M. 147.

Sec. 66 (before amendment 1899) does not require the court to be actually in session, and when the court was adjourned from day to day for the purpose of allowing protest to be filed and the decree was not signed until after the fifth day, no objection could be raised.—Gates v. Johnson, 121 M. 663.

Where the time fixed for the hearing of the petition was November 10 and the court was in session continuously from that day to November 14, inclusive, and then adjourned until Monday the 16th, when the decree was made and entered, it is held that this is sufficient under Sec. 66, Law of 1893 (before amendment of 1899).—Brown v. Houghton Mineral Land and Mining Co., 123 M. 117.

Omission of dollar mark in Tax Record.—Millard v. Truax, 99 M. 157.

The record in this case shows that the 15th day of October, 1895, was fixed by the court for hearing the Auditor General's petition for the taxes of 1893; that on that day the court, by an order, adjourned all proceedings until the 29th day of October, following; that court was in session Oct. 29, 30 and 31, and which day tax matters were heard; that court continued in session Nov. 1 and 2, when it adjourned sine die. On the 15th of November the decree was signed as of the 31st of October. Held, that there was ample time to file objections under the ruling in Miller v. Brown, 122 M. 147.—Allen v. Crowley, 128 M. 530.

A decree of sale (before amendment of 1899) rendered within five days after the day fixed by the hearing is void as to persons who did not appear, or otherwise waive the right to apply for further hearing. Following Peninsular Sav. Bank v. Ward, 118 M. 87, and McGinley v. Mining Co., 121 M. 88.—Aztec Copper Co. v. Auditor General, 128 M. 615.

Where time fixed for hearing was Nov. 11th a decree entered Nov. 16th was not premature.—Brown v. Napper, 125 M. 117.

Sale to State in 1894 and 1895 was set aside by the Auditor General on his own motion and lands readvertised in 1902. The subsequent sale to Griffin attacked on the ground the Auditor General had no authority to set aside the sales to State under first decrees. *Held,* that the action of the Auditor General in setting aside the first sale was not prejudicial to owner.—Blondin v. Griffin, 133 M. 647.

SALES UNDER LAW 1893: Purchaser under Sec. 84 (before amendment in 1899) must pay all taxes that are a lien on the land (whether returned or not), and this amount he is bound to know, and must produce evidence that they are paid if such be the fact.—Hughes v. Jordan, 118 M. 27; Cockburn v. Auditor General, 120 M. 643.

When certain applicants to purchase State tax lands had not paid township taxes then due, but made showing said taxes had been paid, and it appearing that such payment was by checks and made by subsequent applicant prior to his application to purchase, but that at the date of the application of the prior applicants said checks had not been paid, but that they were paid before the subsequent applicant's application was made to purchase: Held, that the subsequent applicant was entitled to deed.—Moore v. Auditor General, 122 M. 599.

A decree entered on the Auditor General's petition for the sale of delinquent taxes before the expiration of five days in term, is not a fatal irregularity and does not avoid the decree provided the court remains in session sufficiently long to afford the statutory opportunity for objections to be heard.—Goodell v. Auditor General, 143 M. 240.

Where the Auditor General cancels tax sales and obtains a new decree and sells thereunder, such sale under the subsequent decree destroys the character of the lands as State tax lands for the previous years; the right of the owner to redeem attaches and the lien of the State may be divested by redemption.—Morse v. Auditor General, 143 M. 610.

Where the State deeds to a purchaser for unpaid taxes and at the time of sale the State holds no liens for prior years for delinquent taxes, it cannot after such sale, set aside prior sales, refund the amount paid, and assert the demand against such subsequent purchaser. In such case, if a sale is set aside and a refund made, the premises are discharged from the lien for those years.—Auditor General v. Clifford et al., 143 M. 626.

This section does not relieve the purchaser of the land at subsequent sales from the purchase of the tax lien for prior years cancelled.—Auditor General v. Sherman, 136 M. 157.

A void sale does not discharge the lien. If the sale is void for any reason that does not affect the validity of the taxes the lien remains and it is the duty of the Auditor General by subsequent petition to proceed to foreclose.—Auditor General v. Newman, 135 M. 288.

The Auditor General may set aside a sale for delinquent taxes on account of a defect in the publication and resell the land.—Rumsey v. Griffin et al., 138 M. 415.

Hearing fixed for September 21, 1896, but not presented to Register in Chancery until November 11, 1896, when it was countersigned and entered. The September term opened September 21, and court was in session nineteen full days before November 11. It was not a decree before it was received by the Register, Seller v. Botsford, 9 M. 490; Newbould v. Stewart, 15 M. 155; Kingsbury v. Kingsbury, 20 M. 215. *Held,* That a decree is not premature if the court *was in session* five days even though decree was entered inside that time. Same holding in Goodell v. Auditor General, 143 M. 246.

The Auditor General is authorized to cancel tax sales which are invalid because of defects in notice, process or decree; and the sale is equally void whether he takes such action or not.—Clothier v. Miller, 173 M. 530.

Writ of assistance, when to be issued.

SEC. 140. (4138) No writ of assistance or other process for the possession of any land the title to which has been obtained under and in pursuance of any tax sale made after the twenty-ninth day of August, in the year of our Lord eighteen hundred ninety-seven; or of any sale of state tax lands or state bids made after the said twenty-ninth day of August, eighteen hundred ninety-seven, except where such title shall be obtained under the provisions of section one hundred thirty-one of this act shall be issued until six months after there shall have been filed with the county clerk of the county where the land is situated, a return by the sheriff of said county showing that he has made personal service of a notice, or proof of substituted service thereof, as hereinafter provided, upon the person or persons appearing by the records in the office of the register of deeds of said county to be the last grantee or grantees in the regular chain of title of such lands, or of any interest therein, at the date of the delivery of such notice to the sheriff for service, and upon the person or persons, if any there be, in the actual open possession of such lands at the date aforesaid, and upon the grantee or grantees under the tax deed issued by the Auditor General for the latest year's taxes then appearing of record in said registry of deeds, and upon the mortgagee or mortgagees named in all undischarged recorded mortgages or any assignee or assignees thereof of record at the date aforesaid, and upon the holder of record of all undischarged recorded liens, which shall be substantially in the following form: Form of notice.

To the owner or owners of any and all interests in, or liens upon the land herein described:

Take notice, That sale has been lawfully made of the following described land for unpaid taxes thereon and that the undersigned has title thereto under tax deed or deeds issued therefor, and that you are entitled to a reconveyance thereof, at any time within six months after return of service of this notice, upon payment to the undersigned or to the register in chancery of the county in which the lands lie of all sums paid upon such purchase, together with one hundred per centum additional thereto, and the fees of the sheriff for the service or cost of publication of this notice, to be computed as upon personal service of a declaration as commencement of suit, and the further sum of five dollars for each description without other additional costs or charges. If payment as aforesaid is not made, the undersigned will institute proceedings for possession of the land.

Description .... Amount paid ....
taxes for 19...

(Signed) ....
Place of business ....

Provided, That if the grantee or grantees, or the person or persons holding the interest in said lands as aforesaid, shall be residents of any county of the state other than the county in which the land is situated, then such return as to such person shall be made by the sheriff of the county where such Proviso, residents of other counties.

Further proviso, non-residents of state.

person or persons reside or may be found: *Provided further,* That if the person or persons entitled to such notice, or any of them shall be non-residents of this State, if from the said record aforesaid, or from inquiry the sheriff can obtain the postoffice address of such person or persons or if said addresses be known to him he shall either send to such non-resident person or persons a copy of said notice by registered letter and return the receipt or receipts of the postmaster received for said letter or letters with his return to the county clerk's office or said sheriff shall cause to be served personally on such person or persons aforesaid a copy of the said notice, and whenever such notice shall be personally served outside of this State, proof of such service shall be made by the affidavit of the person who shall serve the same, made before a justice of the peace or notary public and when such affidavit shall be made outside this State, it shall have attached thereto the certificate of the clerk of the court of record, certifying to the official character of the justice or notary, and the genuineness of his signature to the jurat of the affidavit, and such sheriff shall return the said proof of personal service with his return to the county clerk's office: *Provided further,* That if any person entitled to notice as hereinbefore provided is dead, or if his estate shall be under control of a trustee or guardian, then and in such case notice as hereinbefore provided may be served upon the executor or administrator of said deceased person or upon his heirs, if there be no executor or administrator or upon the trustee or guardian of any incompetent person with like effect as if served upon the grantee, mortgagee or assignee: *Provided further,* That if the sheriff of the county where any such lands are located shall make a return that after careful inquiry he is unable to ascertain the whereabouts or the postoffice address of the persons upon whom notice may be served as aforesaid, or any of them, then such notice as is herein provided for shall be published for four successive weeks, which shall be construed to mean four publications once each week, in some newspaper published and circulating in the county where such lands are located, if there is one; and if no such paper is published in such county then publication shall be made in some newspaper published and circulated in an adjoining county, and due proof of publication by affidavit of the printer or publisher of such newspaper, shall be filed with the county clerk and shall be in lieu of personal service upon the person or persons whose whereabouts or postoffice address cannot be ascertained as aforesaid: *Provided further,* That such service may be made upon any resident of this State by leaving such notice at his usual place of residence with some member of his family of mature age, and upon any non-resident of this State by delivering such notice to him personally in any county of this State where he may be found, and return thereof shall be made by the sheriff of such county. Service in all cases and return thereof may be made by the under

Further proviso.

Further proviso, publication of notice.

Further proviso.

Corporations, how regarded.

Service of notice upon.

Foreign corporations.

sheriff or any deputy sheriff with like effect as if made by the sheriff. Corporations formed under the laws of this State shall be regarded, for the purposes of this act, as residents of the county in this State where their office for the transaction of business therein is by, their articles, located, and service on such corporations may be made on the president, secretary, treasurer or general agent of such corporation, or by leaving such notice at the office of such corporation with some person in charge of such office. If the sheriff of any county in this State in which the office of any such corporation for the transaction of business is, by its articles, fixed, shall return that upon careful inquiry he has been unable to find any such office or any president, secretary, treasurer or general agent of such corporation in such county, service of such notice may be made upon such corporation by publication as hereinbefore provided in case of persons whose whereabouts or postoffice address cannot be ascertained; and this provision shall apply as well to corporations whose term of corporate existence has expired as to those whose term of existence has not expired. Foreign corporations doing business in this State and having an agent therein appointed to accept service of process as required, or as may be required by the laws of this State, shall be regarded, for the purpose of this act, as residents of the county where such agent resides, and service on such corporations may be made on such agent, or by registered letter addressed to such corporations at their home office. The sheriff shall, in his return, state the time when such notice was delivered to him for service, and his return shall be prima facie evidence of the facts therein stated.

History:—Added 1897, p. 294, Act 229, Eff. Aug. 30;—C. L. '97, 3959;—Am. 1899, p. 318, Act 204, Eff. Sept. 23;—Am. 1903, p. 386, Act 236, Imd. Eff. June 18;—Am. 1905, p. 195, Act 142, Imd. Eff. May 25;—Am. 1909, p. 468, Act 270, Eff. Sept. 1.

Recital of consideration in deed not conclusive as to the amount.—Mowrey v. Vandling, 9 M. 39. Recital of consideration in deed is merely to give it effect as conveyance; and for any other purpose parol evidence is admissible to show that it was actually more or less than the amount stated.—Strohauer v. Voltz, 42 M. 444; Doty v. Martin, 32 M. 462. And that it embraces other matters than those stated in the deed.—Dean v. Adams, 44 M. 117; Trevidict v. Mumford, 31 M. 467. See also 11978 and 11984 C. L. '15. The true consideration of a deed may always be shown where it becomes material to do so.—Flynn v. Flynn, 68 M. 20. Consideration of deed may be shown by parol.—Collar v. Collar, 75 M. 414.

The consideration for re-conveyance is double the entire amount paid to purchase the land, which amount includes taxes paid for other years than those included in the deed if such additional taxes were paid as a condition of purchase. Notice in other cases than those definitely provided for in the section is nowhere provided for.—Cheever vs. Flint Land Co., 134 M. 604.

Provisions of Sec. 140 et seq., not applicable to tax sales made prior to August 29, 1897.—Pierpoint v. Osmun, 118 M. 472; Wait v. McMillan, 121 M. 95.

Plaintiff in ejectment claiming under a tax title acquired (if at all) after Act 229 of 1897 took effect, held not entitled to maintain the action, not having served notice on the owners as provided in that act.—Church v. Smith, 121 M. 97.

SUBSTITUTED SERVICE: The statute must be strictly complied with. If substituted service is resorted to it must appear that adequate endeavor has been made to make actual service.—Merrill v. Montgomery, 25 M. 72. Must be confined to the cases and exercised as provided by the statute.—Hartford Fire Insurance Co. v. Owen, 30 M. 441. See also Campau v. Charbeneau, 104 M. 422. Sections 140 and 141 of the tax law should be construed together, and so construed make the time for redemption provided for in Sec. 140 coterminous with the period during which the holder of the tax title may take action.—Pike et al. v. Richardson et al., 136 M. 414.

Imposes upon the purchaser the obligation of good faith and an earnest effort to ascertain the owner and his whereabouts. The statute imposes a duty of ascertaining, if possible, where the land owner lives and if it can be learned by reasonable endeavor that he lives in any county in this State the notice must go to the sheriff of that county for service and be served by him if it can be.—Winter v. Cook, 140 M. 483.

Act 229, Public Acts of 1897, providing for notice by the purchaser of the tax title to the holder of the original title does not require that when a single deed is issued by the Auditor General for the taxes of several years, that the notice given by the purchaser shall show the amount of the taxes for each year. The fact that the notices are addressed to persons named, describing them as owners, does not invalidate them, in absence of misnomer. The sheriff may serve such notice by his deputies.

The notice and return required under Act 229 of 1897 are in no sense jurisdictional, but the proper service of notice is a fact which must exist and must, if questioned, be shown to exist before the tax title holder is entitled to a writ of assistance. The owner of the land may question the asserted fact of proper service of notice in a proceeding directly affecting the right of the holder of the tax title to have possession of the land in question.

Upon the application for a writ of assistance the fact of proper service is, notwithstanding the return, matter to be proven.—Williams v. Olson et al., 141 M. 580.

The Auditor General has power to cancel the deed after the expiration of six months.—Hayward v. Auditor General, 147 M. 591.

Notice by a register in chancery to the holder of a tax title that the requisite amount to redeem his tax title has been deposited with the register constitutes sufficient notification and proof of right to a deed.—Escanaba Timber Land Co. v. Rusch, 147 M. 619.

On a bill filed to remove the cloud of tax sales from a title, and to set aside the sales made to a third party under the State tax homestead law, the decree for the sale cannot be attacked in a collateral proceeding.—Owens v. Auditor General et al., 147 M. 683.

A notice served under Section 140, of the Tax Law by the purchaser at a sale of tax lands must give the amounts paid for each parcel described in order to give the court jurisdiction to issue a writ of assistance.—G. F. Sanborn Co. v. Johnson, 148 M. 405.

The title acquired from the State before the passage of Act 229, laws of 1897, was a title *in fee*.—Toolan v. Longyear, 144 M. 55.

Notices given by the purchasers of tax lands to the owners of the title under Section 140 of the Tax Law must indicate the sum required to be paid to obtain a reconveyance of any description of land in the tax deed, whether sold and held for the taxes of one or for those of several years.

Service by copy of the notice required by Section 140 of the Tax Law is sufficient.

A notice served on the proper parties under Section 140 of the Tax Law is not ineffective by reason of a return of the officer failing to describe the party as executor.—John Duncan Land & Mining Co. v. Rusch, 145 M. 1.

An offer to settle and acceptance in writing and agreed price tendered in time is a valid transaction and avoids the deed.—Briggs v. Boardman et al., 135 M. 329.

Service of the notice of a purchase for taxes made to the holder of the record title in pursuance of Act 229, Public Acts of 1897, amending Section 140 of the Tax Law is valid if the service is made by copy of the original. *Held* ruled by John Duncan L. & M. Co. v. Rusch, 145 M. 1.

The notice required under Act 229, Public Acts of 1897, to be given the holder of the record title by the purchaser of the tax title is not a notice required in the course of proceedings to divest the owner of his title, but a favor granted to him by which his title may be restored to him, and is not subject to the same strict rules which are made to govern the harsh proceedings by attachment, garnishment and similar proceedings.—Richardson Lumber Co. v. Jasspon et al., 145 M. 8.

Where various descriptions are separately sold for taxes, the amount paid for each should be given in the notice to the holder of the title. Failure to do this renders the notice void.—Jackson v. Mason et al., 143 M. 355.

Act No. 229, Public Acts of 1897, providing for six months' grace to the original owner of lands sold to the State for taxes and conveyed to private parties and amending Act No. 206, Public Acts of 1903, is constitutional and the provisions are germane to the title of the original act.—Reed v. Auditor General, 146 M. 208.

A notice by the purchaser of tax lands to the holder of the title must furnish means of identifying with reasonable certainty. A notice giving the town and range but omitting the name of the State is not a valid notice.—Tucker v. Van Winkle, 142 M. 210.

The present tax law, Sections 140 and 143, providing for a six months' notice, and six months' limitation of the right of action, apply to tax titles obtained through courts of chancery and not to deeds obtained under tax proceedings before the law provided for foreclosing tax liens in chancery courts.

Tax titles obtained prior to Act 195, Public Acts of 1899, can be tested only by an action in ejectment or a suit to quiet title, under such tax titles the owner of the tax title can obtain no writ of assistance except at the determination of a suit in equity, and no writ of ejectment except upon judgment in an action at law. Sustaining the validity of the tax title.—Briggs v. Guileck et al., 143 M. 457.

Complainant acquired a tax deed based upon the unpaid taxes of 1898, which deed was acquired at a time when the taxes of 1899, 1900 and 1901 were unpaid, and no part of which has been paid by complainant. Defendant's deed is based upon the unpaid taxes of 1899 and 1901, and she subsequently acquired the interest of the original holders of the title. *Held:* That complainant could not, on giving notices under Secs. 140 and 141 of the tax law, compel defendant to convey to him without reimbursing her for the cost of the original title and the amount paid for taxes of 1900 and 1901, and that defendant's purchase of the original title relieved her from serving the notice required by Sec. 140 of the Tax Law.—Miller v. Meilstrup, 144 M. 643.

Prior to Act 236, Laws of 1903, grantee not required to give notice to holder of tax deeds.—Griffin v. Jackson et al., 145 M. 23.

Section 70 of the Tax Law, (Sec. 4067 C. L.) provides that where taxes are paid the owner shall have one year after notice of a sale for taxes to move the court to set aside the sale.—Hayward v. O'Connor, Trustee, et al., 145 M. 52.

An appeal under Sec. 70 of the Tax Law, on the ground that the taxes have been paid, is a general chancery appeal and no bond is required under Sec. 140 of the General Tax Law.—Hayward v. O'Connor, Trustee et al., 142 M. 230.

Notice to redeem, in case of a deceased owner, must be served upon the executor or administrator of such deceased owner or upon the heirs.—White v. Shaw, 150 M. 270.

Where a description of land is sold for the taxes of several years, the notice served by the purchaser must show the amount paid for each description separate from other descriptions for the entire time covered by the notice.—Haden v. Closser, 153 M. 182.

Service of notice does not apply to purchase of lands for taxes, where purchases were made prior to the taking effect of this section.—McFarlane v. Simpson, 153 M. 193.

The notice must contain a proper description of the land included in such notice and contain the name of the state and county in which the land is located. —Curry v. Larke, 153 M. 348; G. F. Sanborn Co. v. Alston, 153 M. 456.

This section applies subsequent to the taking effect of said section, even though the land was bid off to the state and thus held at the time of the taking effect of said section.—G. F. Sanborn Co. v. Alston, 153 M. 456; Haney v. Miller, 154 M. 337.

Purchaser of lands for taxes, after the taking effect of Sec. 140, has no right to take possession of the land without the service of the necessary notice.—Cook Land Construction and Producing Co. v. McDonald, 155 M. 175.

A tax deed, void on its face, is a nullity, and a notice of sale based thereon must fail.—Fitschen v. Olson, 155 M. 320.

Act No. 236 Public Acts of 1903 amending sections 140 and 141 by providing for service of notice upon owners of any and all interests in the land described, and that payment may be made by the owner to the register in chancery (county clerk) and changing the form of the notice, as applied to tax deeds issued before the amendment, affects the remedy of the tax purchaser only, and is not in violation of the obligation of this contract. And applies to all notices served after the taking effect of such amendment.—Weller v. Wheelock, 155 M. 698.—Curry v. Backus, 156 M. 342.

Evidence of the service of a notice to redeem from the sale of land for taxes, held, sufficient to support a finding that said notice was personally served upon the owner of the land.—Curry v. Backus, 156 M. 342.

Notices are not required to be served upon owners of tax deeds where such deeds have not been recorded.—Heethuis v. Kerr, 180 M. 520.

Notice may include in the amount required to take a reconveyance, taxes for previous years which the tax purchaser was required to pay in order to obtain title.—Closser v. McBride, 182 M. 594.

The notice was not void where the land was described as an 80 acre parcel in the notice for which it was so assessed and sold for taxes of certain years, and for other years, for which purchase was made, it was assessed and sold as 40 acre parcels.—Id.

In a return of service by the sheriff, error in the spelling of the name of the party served is not necessarily fatal.—Mercer v. Stephens, 185 M. 290.

Return of sheriff is sufficient to authorize service by publication.—Id.

The form of the notice served on the owner must comply with the statute in force at the time of the service of such notice.—Rousseau v. Riihiniemi, 186 M. 638; Clugston v. Rogers, 203 M. 339.

Proper notices must be served upon all parties entitled to notices, a proper return of service made and filed, and the six months' period must have elapsed before tax title purchaser can institute proceedings to obtain possession of land purchased for taxes.—Bretz v. Hitchcock, 188 M. 492.

Return of sheriff showing service of notice on proper parties, accompanied by registry receipts signed by owners or their agents is prima facie proof of service.—Gogebic Lumber Co. v. Moore, 157 M. 499.

A notice to the owner in which the descriptions, amounts paid, and years for which the taxes were levied appear in columns, is not objectionable in form and the statement of the year's taxes made opposite the descriptions must be taken to refer to all the descriptions.—Gogebic Lumber Co. v. Moore, 157 M. 499.

The notice served by a purchaser of a tax title to terminate the right of conveyance, must conform to the statute, be addressed to all parties in interest, and permit payment to the register in chancery (county clerk) although the purchase may have been made prior to the amendment of 1903.—Dolph v. Norton, 158 M. 417.

Notice of the purchase of State tax lands, which do not describe the several parcels deeded to the purchaser and the amounts due for each, are fatally defective.—Ensley v. Coolbaugh, 160 M. 299.

Defendants in ejectment who claim to be in possession of real property, gain no additional rights by virtue of a tax deed from the state, if they have failed to serve the statutory notice, which is held to be a condition precedent to the vesting of title under tax proceedings.—Tuthill v. Katz, 163 M. 618.

A notice which omits the state and county in which the land is situated is void.—Morrison v. Semer, 164 M. 208.

Until the holder of a tax deed serves notice upon the owners of a mineral estate in lands, as well as upon the owners of the service rights, the right of reconveyance from the tax purchaser remains to all.—Hansen v. Hall, 167 M. 7.

The notice must show the amount paid for each parcel described and assessed separately.—McRae v. Barber, 167 M. 314.

A notice to the owner of land is ineffective if it describes only a part of the land, or is improperly addressed, or if it fails to state that the sum demanded may be paid to the register in chancery (county clerk), or if not signed by the purchaser.—White v. Dunsmore, 167 M. 542.

Ejectment lies in favor of the owner of lands occupied by a tax title purchaser who has failed to give due notice of his purchase.—McRae v. Barber, 171 M. 111.

The grantee under the last recorded deed in the regular chain of title is entitled to notice and is not cut off where notice has not been served on him by service on a later grantee in tax deeds issued by the State.—G. F. Sanborn Co. v. Richter, 176 M. 562.

The statute does not impose upon the holder of a tax title any obligation to look beyond the records of the county in which the lands are located, but if he makes further investigation and obtains information relative to the ownership of the property and serves a notice on the basis of that information, he is bound by such a notice.—Teal Lake Iron Mining Co. v. Olds, 178 M. 335.

The amount specified in the notice must be correctly stated: an excess of eighty-nine cents is sufficient to invalidate the notice.—Id.

This section provides for personal notice if possible and if not by substituted service by publication. Held, that while the personal service provided for was not complete until the sheriff's return was made and filed, it is not necessary to wait the filing of the sheriff's return before proceeding with the publication of the notice.—Heethuis v. Kerr, 194 M. 689.

The return of the sheriff is not final.—Id.

The form of the notice must comply with the provisions of the statute in force at the time of the service of the notice.—Closser v. Remley, 195 M. 313.

Service of a notice by a tax title purchaser on the owner by leaving such notice with the owner's wife in the owner's absence is a valid service.—Merrill v. Myers, 197 M. 356.

Return by the sheriff of the service of a notice upon a person designated as president of a corporation, although such person is the secretary of the corporation, and is the proper person upon whom service should be made, is a valid service.—P. L. Sherman Co. v. Pearll, 197 M. 557.

In a notice by a purchaser to the owner of the land in which the description was given as follows, "State of Michigan, County of Crawford, E² of SW⁴, Sec. 30, Town 28 N Range 1 W"; Held, a proper description.—Dunn v. Papenfus, 202 M. 131.

A notice was not void because the fees charged on the sheriff's certificate were excessive, since the notice itself provides for reconveyance upon payment of certain specified sums and contains the legal method for the exact determination of the sheriff's fees.—Id.

Where the notice advised the owner that his land had been sold for taxes and that he could take a reconveyance within six months for a certain definite sum, the notice was not invalid because in giving the years for which sale was made one year was omitted.—Hildie v. Eckhart, 203 M. 346.

In the absence of information that the grantee in the regular chain of title was deceased, it was unnecessary for the sheriff's return to show that he was unable to locate the heirs.—Id.

Return by sheriff of the service of the notice by registered letter accompanied by the receipt received by the sheriff, which was not signed by the party to whom same was addressed, but by a stranger to the title, is not a sufficient notice.—Fowler v. Stubbings, 203 M. 383.

Where the notice served upon the owner was based upon a purchase for taxes of two years and the notice stated the amount paid for each year and the purchase for one of the two years was void the notice was sufficient.—Triangle Land Co. v. City of Detroit, 204 M. 442.

In an action to enjoin the service of a writ of assistance the owner of the record title is not entitled to have the value of the improvements on the land determined and set off to him, on the ground that the tax title purchaser was entitled to the interest in the land only, independent of the buildings.—City of Detroit v. Triangle Land Co., 207 M. 49.

Service of notice upon the heirs of a deceased owner is only permitted where there is no executor or administrator of such deceased person's estate, and return by the sheriff of the service of the notice should show that there was no executor or administrator upon whom service could be had.—Closser v. Hanson Land Co., 209 M. 517.

Where the service upon non-resident heirs was attempted to be made by the sheriff by registered letter, the return of the sheriff must show either the return receipt of the postmaster or of the parties to whom the letter was addressed.—Id.

A notice not signed by the purchaser or by anyone in his behalf is a nullity.—Burch v. Nippress, 213 M. 185.

Where the tax title purchaser purchases at different times the same description for taxes of various years and includes the several years in his notice, he is only entitled to one 'description fee.'—Burch v. Nippress, 213 M. 185.

Where a grantee in a tax deed was required to pay taxes of subsequent years returned delinquent to the Auditor General, he had the right to include the amount thereof in the notice to the owner of the record title.—Masters v John Widdicomb Co., 221 M. 249.

The notice must be signed by the owner of the tax title who should state his post office address so that the owner may be informed to whom he should pay the amount required for reconveyance and where he can be reached.—Wilson v. Sauble, 193 M. 443.

A notice is made void by including in the amount stated in the notice a sum paid by the purchaser for taxes of subsequent years which was not paid as a condition of purchase unless such fact is stated in the notice.—Id.

Persons having estate, etc., when entitled to release, etc.

SEC. 141. (4139) Any person having any estate in such lands or any interest therein, either in fee, for life or for years, or any mortgagee thereof or assignee of any undischarged mortgage thereon, or the holder of any lien thereon, or any executor, administrator, trustee or guardian of such persons, or any of them, or any person in the actual possession of such lands at the time of such tax purchased, shall be entitled to receive from the person so claiming under and by virtue of such tax deed, his heirs or assigns at any time within six months after the filing of return of service or the filing of proof of publication of such notice, as hereinbefore provided, a release and quit claim of all right and interest in such land acquired under such tax deed or deeds, upon payment to him or them, or to the register in chancery of the county in which the lands are located, of the amount paid upon such purchase, together with one hundred per centum in addition thereto, and the lawful fees of such personal or substituted service, which fee shall be the same as provided by law for service of subpoenas or for orders of publication or the cost of such service by registered mail, and the further sum of five dollars for each description without additional cost or charge: *Provided,* That any person or persons entitled to a release and quit claim under the foregoing provisions of this section, at any time after the issue of tax deeds on such lands, or after the purchaser thereof shall be entitled to such tax deeds, and before service of notice or return thereof as herein provided, shall have the right to redeem such lands from such sale, by paying to the purchaser, or his grantee, or to the register in chancery of the county in which the lands lie, on the certificate of the Auditor General or his deputy, all sums paid as a condition of such purchase, together with one hundred per centum additional thereto, and the further sum of five dollars for each description. By such payment the tax title and any and all such certificates of sale shall become void, and of no effect against the lands to be redeemed. The register in chancery shall, whenever payment is made to him, as provided in this section, at once notify the owner of the tax title, or of any and all such certificates of sale, of the payment so made, and the owner of the tax title, or of any such certificates of sale, shall forthwith deliver to said register a release and quit claim of all rights acquired by him under said tax purchase, running to the person making such payment, and shall also deliver to said register the tax deed, certificates of purchase, tax receipts, and all other conveyances relating to said tax title or tax interest before he shall be entitled to receive the money paid to said register as herein provided. Upon delivery of such release and quit

Proviso, redemption.

Tax title, etc. when void.

When owner to deliver release, etc.

claim, and of such certificates of purchase and tax receipts, the register in chancery, shall at once pay over to the owner of the tax title all sums received by him for the redemption of the lands therein described: *Provided further,* That no quit claim or reconveyance made under the provisions of this section shall be construed to vest in the grantee any title or interest in such lands beyond that already owned by him, but such grantee shall be entitled to a lien on such lands, or on such parts thereof or interests therein as are not owned by him for the amount paid, or such portion thereof as is lawfully chargeable to such parts or interests, in addition to the lien or other interest before held by such grantee; which lien may be enforced in any court of competent jurisdiction as in other cases of liens upon lands, with interest thereon at the rate of six per centum per annum from the date of such payment. The circuit courts in chancery shall have jurisdiction to enforce the liens herein provided for without regard to the amount of such liens: *Provided further,* That any such application for a writ of assistance shall show that such applicant had complied with the provisions of this act as to the giving of notice, as herein directed, and he shall attach to such application a copy of the notice aforesaid, and the return of the sheriff serving the same, or a copy of the proof of publication, or the registry receipt or receipts from the registry department of the postoffice showing that such notice has been served by registered mail.

Further proviso.

Lien.

Enforcement and interest.

Further proviso.

History:—Added 1897, p. 141, Act 229, Eff. Aug. 30;—C. L. '97, 3960—Am. 1899, p. 319, Act 204, Eff. Sept. 23;—Am. 1903, p. 388, Act 236, Imd. Eff. June 18;—Am. 1905, p. 327, Act 226, Eff. Sept. 16;—Am. 1909, p. 471, Act 270, Eff. Sept. 1.

Tender for reconveyance is to be made to the purchaser. Neither the Auditor General nor county treasurers have anything to do with reconveyance under this section.

The language of sections 140 and 141 clearly indicates the legislative intent that as a condition of reconveyance the purchaser of the State's title shall be repaid all that he has been compelled to advance to obtain his title.—Cheever v. Flint Land Co., Ltd., 134 M. 604.

Where lands owned by more than one party are assessed and bid in by the State as one parcel and sold by the State as one parcel at the tax sale mandamus will not lie to compel the Auditor General to allow one of the owners to redeem under sections 140 and 141 of the tax law by paying a pro rata proportion of the bid in proceedings in which the purchaser is not a party.—Kennedy v. Auditor General, 134 M. 534.

A prior unrecorded deed, good as between the parties, is valid as against a subsequent quit-claim deed of the same property by the same grantor, and a grantee in a quit-claim deed is not a bona-fide purchase, following rule in Peters v. Cartier, 80 M. 124.—Messinger v. Peter, 129 M 93.

The right of the holder of the record title to redeem from a tax sale does not expire until six months from the date of filing the return of service made on the holder of the record title.—Holmes et al. v. Loud et al., 149 M. 410.

The personal service referred to in Sec. 141 of the Tax Law contemplates a service completed by filing a return.—Pike et al. v. Richardson et al., 136 M. 414.

Under Act 229, Public Acts of 1897, title acquired by purchase of a State tax deed under Section 72 of the General Tax Law, (Sec. 4069 C. L.) does not become absolute until the period of redemption provided for in Act 229 has expired, even though the title had become absolute in the State before sale.—Adkin v. Pillen, 136 M. 682.

Conveyance to free owner merges tax title into original title.—Miller v. Meilstrup, 144 M. 643. Boucher v. Trembley et al., 140 M. 352.

The period of limitation to redeem given the owner of the title purchased at a tax sale, begins with the notice and runs until such time as the tax title holder has brought himself within the statute conditions for taking action. Courts will not construe the legislation as to make its provisions mandatory and applicable only to cases where the returns of notice show exact conformity with the statute provisions. Actual proper service of the notice may be shown where the return does not recite that fact.—Williams v. Olson et al., 141 M. 580.

Lots assessed and sold separately may properly be included in one deed, and may properly be included in one notice but persons interested have the right to repurchase any one or any number of the separate lots and are not required to purchase all.—Jackson v. Mason, 143 M. 355.

The vendee in a recorded land contract is entitled to notice.—Jackson v. Mason, 143 M. 355.

The time of redemption under a sale for delinquent taxes to a purchaser does not begin to run until the return of proof of publication or notice to the holder of the title.—Escanaba Timber Land Co. vs. Rusch, 147 M. 619.

One who relies upon the statement of a county clerk as to the amount due under a notice served by the purchaser of a tax title, and who pays the same in good faith with the necessary fees for service, will be protected by such payment.—O'Connor, Admrx. v. Gottschalk et al., 148 M. 450.

Where land belonging to several owners is assessed as an entirety and so sold for taxes, the purchaser is not entitled to take possession of the same until after the expiration of six months following the service of the notice on each of the owners. And until the expiration of the six months' notice, any one of the owners may take a re-conveyance.—White v. Shaw, 150 M. 270.

Where a tax title purchaser, after his purchase, has paid taxes of subsequent years in good faith to protect his purchase, he is entitled, as a matter of equity, to be reimbursed by the owner of the original title for the amount of such subsequent taxes, together with interest at the legal rate, from date of payment, before he can be compelled to reconvey to the owner.—G. F. Sanborn Co. v. Alston, 153 M. 456.

Even though subsequent taxes paid as a condition of purchase are invalid, the owner of the original title must reimburse the tax title purchaser for the amount of such taxes paid by the purchaser as a condition of his purchase.—Haney v. Miller, 154 M. 337.

On being notified by the register in chancery (county clerk) that permission has been made to him to take a reconveyance, it is the duty of the tax title holder to make reconveyance and accept from the register a sum deposited with him for that purpose.—Backus v. Killmaster, 162 M. 594.

Payment to register in chancery (county clerk) by post office money order is a legal tender.—Id.

If, by the conduct of the register in chancery (county clerk) the tax purchaser has lost the money, his remedy is against the officer.—Id.

In an action to compel reconveyance by tax title purchaser, after a tender by the owner of the amount required by law, the purchaser is entitled to reimbursement for sums paid subsequent to his purchase in order to protect his tax title interest.—Backus v. Hoyt, 164 M. 407.

In a suit by the owner of land to quiet title as against a purchaser for taxes of certain years, the owner will be required to do equity by refunding, as a condition to relief, the validly assessed taxes for the years which the defendant had purchased.—Morrison v. Semer, 164 M. 208.

The owner of a mineral estate in lands has the right of reconveyance.—Hansen v. Hall, 167 M. 7.

The owner of land which is subject to a tax title covering other descriptions, all assessed as one parcel, can not compel the holder thereof to accept less than the entire amount paid and penalty as a condition of reconveyance.—Loud v. O'Brien, 167 M. 206; Closser v. Hansen Land Co., 209 M. 517.

The owner of the record title of lands sold for taxes can not maintain trespass for the wrongful entry of the holder of the tax interest before tendering the amount due and obtaining a reconveyance from the purchaser.—White v Dunsmore, 167 M. 542; Gustin v. Fitzpatrick, 182 M. 640.

The time for taking a reconveyance is not extended by the commencement of a suit to determine the validity of the tax deeds.—Clothier v. Miller, 173 M. 530.

Where a description is sold by the county treasurer from the State Tax Land List and Tax Record, the owner of the original title must, on taking a reconveyance, pay to the tax title purchaser the full amount paid by him at the time of his purchase.—Grand Haven Arbiter Unterstutzungs Verein v. Soule, 175 M. 210.

Until the statutory notice is served upon all parties entitled thereto and proof thereof is made and filed, the right of reconveyance remains to all.—G. F. Sanborn Co. v. Richter, 176 M. 562.

Under this section prior to the amendment of 1909, a tax title holder whose deed was not of record was not entitled to notice and did not have the right of reconveyance.—Heethuis v. Kerr, 180 M. 520.

One claiming title to land by quit claim deed from the holder of the original title has the right of reconveyance from the holder of a tax deed who has failed to serve a valid notice.—Closser v. McBride, 182 M. 594.

After the sale to the State of land for taxes and the expiration of the period of redemption and the sale of such land to a purchaser, the owner of the original title has no further interest in the land until he takes a reconveyance.—Huron Land Co. v. Lobdell-Churchill Mfg. Co., 183 M. 45.

A court of equity is the proper forum for determining whether or not the owner of a title cut off in tax proceedings, is entitled to a reconveyance from the tax title owner who refuses it; that he does not acquire title by a tender of money, the right to make which is disputed.—Wilson v. Sauble, 181 M. 406.

An heir of the owner in the regular chain of title has the right of reconveyance.—Mercer v. Stephens, 185 M. 290.

The owner of the record title, who permits his land to be sold for taxes, is not entitled to an accounting for timber removed by the purchaser, until he takes a reconveyance.—Bretz v. Hitchcock, 188 M. 492.

The costs of attempted service of personal notice and incomplete substituted service of notice by publication were not proper items of expense to be charged against the owner who had deposited with the register in chancery (county clerk) the necessary amount to take a reconveyance as shown in the certificate of the Auditor General.—Rousseau v. Riihiniemi, 186 M. 653.

One purchasing from the original owner by quit claim deed has the right of reconveyance.—Wilson v. Sauble, 193 M. 443.

One entitled to reconveyance has the full six months' period in which to take such reconveyance after the filing of the return of the service of the notice in the office of the county clerk.—Closser v. Remley, 195 M. 313.

One claiming the right of reconveyance must exercise such right before the expiration of the six months' period.—Merrill v. Myers, 197 M. 356.

The provision that notice shall be served upon the person or persons appearing in the regular chain of title, "or of any interest therein," includes owners of reserved timber rights and such owners are entitled to notice.—Dunn v. Papenfus, 202 M. 131.

The record holder of a tax deed for the taxes of an earlier year is entitled to notice from a subsequent tax title purchaser.—Hildie v. Eckhart, 203 M. 346.

Until there has been a service upon all parties entitled to notice, the right of reconveyance continues.—Burch v. Nippress, 213 M. 185.

Where the owner deposited with the county clerk the amount necessary to take a reconveyance as computed by him, it was a sufficient compliance with the statute, although such amount did not include the sheriff's fees, which were subsequently tendered.—Id.

Purchaser of tax title not to enter into possession.

SEC. 142. (4140) No purchaser under any tax sale hereafter made or of any State tax land or any State bid hereafter sold shall enter into possession of the land so purchased until six months after he has given notice to the party or parties in interest as provided for in the preceding sections unless he shall have acquired from said parties their title thereto under conveyance from said party or parties of his or their interest in said lands. Where the land is vacant and unoccupied and no writ of assistance is needed to put the purchaser into possession thereof, the time for redemption herein provided shall expire six months after the delivery of such notice to said party or parties in interest, or date of mailing such notice by registered letter, or first publication thereof, and filing proof thereof with the county clerk of the county where said lands are situated as herein provided: *Provided,* That if suit or other proceeding is commenced before the expiration of the said six months by the owner of the land so purchased, or one having a redeemable interest therein, to set aside the sale thereof, the purchaser under tax sale or his grantee shall not enter into possession of the land until the final determination of such suit or other proceeding.

Vacant and unoccupied land.

Suit to set aside, stays running of notice.

History:—Added 1897, p. 296, Act 229, Eff. Aug. 30;—C. L. '97, 3961;—Am. 1903, p. 110, Act 83, Eff. Sept. 17;—Am. 1905, p. 197, Act 142, Imd. Eff. May 25.

Purchaser cannot enter into possession until after notice, and if he does he is a trespasser and not entitled to recover for improvements.—Corrigan v. Davis, 125 M. 125; White v. Dunsmore, 167 M. 542; Powell v. Pierce, 168 M. 427; Closser v. Remley, 195 M. 313.

A notice by the purchaser of the tax title to the owner of the fee, required by statute, is not invalid by reason of describing the owner as the mortgagee of the land, and the statute does not require the service of evidence of the sale or confirmation.—Bradley v. Williams et al., 139 M. 230.

Where the purchaser of a tax title permits the holder of the record title to redeem after the expiration of six months, he waives the irregularity.—Holmes et al. v. Loud et al., 149 M. 142.

The six months' periods mentioned in Secs. 141 and 142 of the General Tax Law are co-terminous.—Holmes et al. v. Loud et al., 149 M. 142.

By entering into possession of lands under a claim of ownership through tax deeds, tax title purchaser did not obtain any rights, if a valid notice to redeem had not been served upon the proper parties.—Holmes v. Soule, 180 M. 526; McBride v. Closser, 208 M. 398.

After a tax title purchaser has complied with the provisions of this section, either by serving the statutory notices or having secured from the owners of the record title by a conveyance from them, he has the right to take possession of the property.—Chandler v. Richardson Lumber Co., 181 M. 309.

The notice being void, a tax title purchaser has no right to take possession of the premises and is not entitled to recover for improvements made during such possession.—Closser v. McBride, 182 M. 594; Clugston v. Rogers, 203 M. 339.

Where a tax title purchaser enters into possession of land and maintains actual and undisputed possession of the same for a period of more than fifteen years, he acquires title by adverse possession even though he failed to serve notice as required by Sec. 140.—Lawson v. Bishop, 212 M. 691.

Prima facie evidence of ownership.

SEC. 142a. (4141) If any such grantee or grantees, mortgagee or mortgagees or person or persons so in possession shall fail and neglect to redeem such land within said six months, as provided in the foregoing sections, at any time within thirty days after the expiration thereof the county clerk of the county shall cause to be recorded in the office of the register of deeds for the county in which said land is situate, in a record to be provided for that purpose, a copy of said notice and proof of service thereof, duly certified by the county clerk in whose office the same is filed, and the record thereof shall be prima facie evidence in all courts and tribunals that such purchaser is the owner of said land under said purchase. Such county clerk shall be entitled to a fee of twenty-five cents for filing such notice and to the fees provided by law for making such copy thereof and certifying thereto, and he shall be entitled to a fee of fifty cents for recording said copy of notice and proof of service thereof and he shall collect from the purchaser under such sale or deed the recording fee of the register of deeds, and such register of deeds shall be entitled to the same fees for recording such copy as is provided by law for recording deeds of conveyance and other instruments.

Fees of county clerk and register of deeds.

History:—Added 1905, p. 197, Act 142, Imd. Eff. May 25;—Am. 1917, p. 521, Act 246, Eff. Aug. 10.
This certificate only applies where reconveyance has not been taken under the provisions of Sec. 141.—Vincent v. Evans, 165 M. 695.

Failure to take reconveyance bars owner from questioning title.

SEC. 143. (4142) Every person personally served with the notice provided for by act number two hundred twenty-nine of the Public Acts of eighteen hundred ninety-seven, and every person lawfully chargeable with such notice by registered mail, as provided for in said act, together with the heirs, executors, administrators or assigns of such persons, who shall refuse or neglect to pay or tender to the purchaser as aforesaid, the sum provided for in said act within the time therein limited, and who shall have neglected within the said six months to commence suit to set aside the said tax deed, shall thereafter be barred from questioning the validity of such tax title or tax deed mentioned therein.

History:—Added 1897, p. 297, Act 229, Eff. Aug. 30;—C. L. '97, 3962;—Am. 1901, p. 176, Act 128, Eff. Sept. 5;—Sub-section 2 of Act 128 of 1901 expressly repeals C. L. '97, 3962.
Legislature has power to pass limitation laws prescribing to time within which parties shall assert their rights by suit.—Price v. Hopkins, 13 M. 318.
The statute of limitations provided by Act 128, Public Acts of 1901, is not a general statute of limitations as to tax title, but applies only to titles obtained under chancery proceedings.—Briggs v. Guleck et al., 143 M. 437.
Section 143 of the Tax Law (Act 206 of 1893), imposing a six months' limitation in which the owner of land may question the validity of a tax deed or tax title, does not apply to the vendee in an unrecorded contract for the sale of land who has paid the tax, and who has not been served with notice by the purchaser of the tax title, although his grantor was properly served as the holder of the record title.—Jakabowski v. Auditor General, 144 M. 46.
Section 143 of the Tax Law as amended by Act 126, Public Acts of 1901, providing a six months' limitation to commence suit to set aside a tax deed after notice of purchase, is unconstitutional and not taking property by due process of law.—O'Connor v. Carpenter, 144 M. 240.

Where taxes have been paid and the land erroneously included in Auditor General's petition, and decree making sale confirmed, a cancellation may be made by the Auditor General even after the expiration of six months' notice by the purchaser of the tax title.—Schaaf et al. v. Auditor General et al., 146 M. 504; Hayward v. Auditor General, 147 M. 591; Hall v. Miller, 150 M. 300.

Owners are not barred by neglecting to take a reconveyance, after the service of a notice based on a deed void on its face.—Fitschen v. Olson, 155 M. 320.

Auditor General party defendant. How represented. Costs.

Sec. 144. (4143) The Auditor General shall be made a party defendant to all actions or proceedings insituted for the purpose of setting aside any sale or sales for delinquent taxes on lands held as State tax lands, or which have been sold as such or which have been sold at annual tax sales, or for purpose of setting aside any taxes returned to him and for which sale has not been made; in all such cases a copy of the bill of complaint or petition shall be served upon the Auditor General and the prosecuting attorney at the time of commencing the action, which said service shall be in lieu of the service of process. Upon so being made a party, it shall be the duty of the Auditor General, whenever he shall, in his discretion deem the same to be expedient, to the end that the State of Michigan may be fully protected, to cause the Attorney General to represent him in such proceedings. In any suit or proceedings instituted for the purpose in this section mentioned, no costs shall be taxed against either party to the action.

History:—Added 1899, p. 140, Act 97, Imd. Eff. June 1;—Am. 1911, p. 12, Act 10, Eff. Aug. 1.

As to requirement of one seeking to set aside taxes see Merrill v. Auditor General, 24 M. 169.

In suit to set aside drain tax county drain commissioner shall be made a party.—Act 141 of 1899.

An order of the circuit court denying a writ of assistance and holding a tax sale void in a proceeding in which the Auditor General was not a party, may be reviewed on a petition for mandamus to compel the Auditor General to refund the taxes held void under the decree.—Newton v. Powers, Auditor General, 131 M. 547.

See Secs. 70, 73, 76.

A tax-payer who neglects or refuses to pay any portion of his assessment and litigates all of it, will be required to pay such penalties and interest as are fixed by law upon such portion of the assessment as is held valid.—Powers et al. v. City of Detroit, et al., 139 M. 30.

Sec. 144 held valid.—Haney v. Miller, 154 M. 337.

Governor to appoint Tax Commission. Term of office.

Sec. 145. (4144) It shall be the duty of the Governor on the first day of November nineteen hundred five, to appoint three resident freeholders of this State, who shall be duly qualified electors thereof, and who shall hereafter constitute a Board of State Tax Commissioners, with powers and duties as prescribed under this act, one of whom so appointed shall hold office until the first Wednesday in January, nineteen hundred nine, one of whom so appointed shall hold office until the first Wednesday in January, nineteen hundred eleven, and one of whom so appointed shall hold office until the first Wednesday in January, nineteen hundred thirteen, and until their successors shall have been appointed and shall have qualified. Thereafter the successors of each member of said Board of State Tax Commissioners shall be appointed by the Governor by and with the advice and consent of the Senate, and shall hold office for the term of six years and until their successors shall have been appointed and qualified. The persons who now constitute the

Board of State Tax Commissioners under appointments heretofore made shall continue to hold their office until the first day of November, nineteen hundred five, and until their successors shall have been appointed and qualified. All appointments which are provided to be made by the Governor under this section of this act, except in the first instance, shall be made while the legislature is in session, and not at any other time, except in cases where a vacancy in office shall occur otherwise than by the expiration of the term of office of any member of said board. In case a vacancy in the office occurs otherwise than by expiration of the term, the Governor shall have power to appoint to fill such vacancy at any time, and the person so appointed shall hold office until the next meeting of the legislature after such appointment, and no longer.

Appointments to be made during session of legislature.

Vacancies.

History:—Added 1899, p. 229, Act 154, Imd. Eff. June 23;—Am. 1901, p. 249, Act 174, Imd. Eff. May 27;—Am. 1905, p. 434, Act 281, Eff. Sept. 16.

The assessment of property for taxation is not a matter of such local concern that the legislature cannot provide for a State board of tax commissioners to supervise and revise the assessments made by the local assessors.—State Tax Commissioners v. Assessor City of Grand Rapids, 124 M. 491.

Sec. 146. (4145) Said board shall elect a secretary at a salary not to exceed two thousand dollars per annum, and a chief clerk at a salary not to exceed one thousand eight hundred dollars per annum: *Provided,* That when any person shall have served continuously as secretary for a period of four years the salary of said secretary may be increased to an amount not exceeding three thousand dollars. The persons so elected shall hold their offices during the pleasure of said board. The secretary shall keep a record of all the proceedings of said board, and shall perform such other duties as may be assigned to him by the board. The secretary and chief clerk shall devote all their time to the duties of their offices.

Secretary, salary of.

Duties.

History:—Added 1899, p. 229, Act 154, Imd. Eff. June 23;—Am. 1901, p. 249, Act 174, Imd. Eff. May 27;—Am. 1905, p. 435, Act 281, Eff. Sept. 16;—Am. 1911, p. 23, Act 17, Eff. Aug. 1.—Am. 1917, p. 680, Act 260, Eff. Aug. 10.

Sec. 147. (4146) The members of said board, and the secretary and chief clerk thereof, shall take and subscribe the constitutional oath of office to be filed with the Secretary of State. The members of said board shall receive an annual salary of two thousand five hundred dollars; and they shall also receive their necessary expenses in the performance of their duties, both to be audited and allowed by the Board of State Auditors, and paid monthly by the State Treasurer out of the general fund.

Members to take oath.

Salary and expenses.

History:—Added 1899, p. 229, Act 154, Imd. Eff. June 23;—Am. 1905, p. 435, Act 281, Eff. Sept. 16.

Sec. 148. (4147) All regular sessions of said board shall be held at the office of said board in the city of Lansing, to be furnished by the Board of State Auditors. Special meetings of said board may be held at any place most convenient. The said board and the members thereof, or any duly authorized representative thereof, shall have access to all books,

Sessions of board, where held.

papers, documents, statements and accounts on file or of record in any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of the public records. The said board and the members thereof, or any duly authorized representatives thereof, shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities, and shall have authority to take possession of any assessment roll for use in carrying out the provisions of this act upon presenting to the assessing officer having the same in his control a receipt therefor, signed by the person taking such roll in his possession, and the said board shall be responsible for the return of said roll within a reasonable time thereafter; said board shall have the right to subpoena witnesses upon a subpoena signed by the chairman of said board, and attested by the secretary thereof directed to such witnesses, and which subpoena may be served by any person authorized to serve subpoenas from courts of record in this State, and the attendance of witnesses may be compelled by attachment to be issued by any circuit court in the State upon proper showing that such witness has been properly subpoenaed and has refused to obey such subpoena. The person serving such subpoena shall receive the same compensation now allowed to sheriffs and other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Said board or any duly authorized representative thereof shall have the right to examine the property, books, papers or accounts of any corporation, firm or individual owning property liable to assessment for taxes, general or specific, under the laws of this State, and to require, upon blanks to be furnished by said board, a statement under oath of the president, secretary, superintendent or managing officer of a corporation, of a member of a firm, or an individual, containing such information as the said board may require to enable it to arrive at the true cash value of the property of such corporation, firm or individual subject to taxation under the laws of this State, and any assessing officer who shall refuse to deliver his assessment roll upon demand of a member or representative of the Board of State Tax Commissioners, or any officer or stockholder of any such corporation, any member of any such firm, or any person or persons who shall refuse to permit said inspection, refuse or fail to make such statement, or neglect or fail to appear before said board in response to a subpoena, or testify as provided for in this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the State prison for a period not exceeding two years, or by both such fine and imprisonment in the discretion of the court.

Shall have access to books and records.

Witnesses.

May examine books of corporations.

Penalties.

History:—Added 1899, p. 229, Act 154, Imd. Eff. June 23;—Am. 1905, p. 435, Act 281, Eff. Sept. 16;—Am. 1911, p. 23, Act 17, Eff. Aug 1;—Am. 1913, p. 268, Act 153, Eff. Aug. 14;—Am. 1915, p. 225, Act 138, Eff. Aug. 24.

The Board of Tax Commissioners giving notice of General Review on a day certain must show by their record, adjournments from such day.—Delray Land Co. et al. v. Springwells Township, 149 M. 397.

Regular and adjourned meetings.

SEC. 149. (4148) Said board shall hold regular meetings on the first Tuesday of March, June, July, August, September and October in each year, and may hold adjourned sessions as may be deemed necessary by it for the proper performance of the duties devolving upon said board. The chairman may call special sessions of the board whenever he may deem it advisable so to do, and shall call such special sessions upon the written request of two members.

History:—Added 1899, p. 230, Act 154, Imd. Eff. June 23;—Am. 1905, p. 436, Act 281, Eff. Sept. 16.

Duty of board.

SEC. 150. (4149) It shall be the duty of said board:

1. To have and exercise general supervision over the supervisors and other assessing officers of this State, and to take such measures as will secure the enforcement of the provisions of this act to the end that all the properties of this State liable to assessment for taxation shall be placed upon the assessment rolls and assessed at their actual cash value;

2. To confer with and advise assessing officers as to their duties under this act, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with the provisions of this act; to prefer charges to the Governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the said board may call upon the Attorney General or any prosecuting attorney in the State to assist said board;

3. To receive all complaints as to property liable to taxation that has not been assessed or that has been fraudulently or improperly assessed, and to investigate the same, and to take such proceedings as will correct the irregularity complained of, if any is found to exist;

4. To require from any officer in this State, on forms prescribed by said Board of State Tax Commissioners such annual or other reports as shall enable said Board of State Tax Commissioners to ascertain the assessed value and equalized values of all property listed for taxation throughout the state under this act, the amount of taxes assessed, collected and returned and such other matter as the board may require, to the end that it may have complete statistical information as to the practical operation of this act;

5. To furnish the State Board of Equalization at each session thereof an estimate of the actual cash value of the taxable property of each county in the State, and to meet with the State Board of Equalization when requested by said board to do so.

History:—Added 1899, p. 230, Act 154, Imd. Eff. June 23;—Am. 1905, p. 436, Act 281, Eff. Sept. 16;—Am. 1913, p. 269, Act 153, Eff. Aug. 14.

A single member of the State Tax Commission may act in reviewing assessments and in making additions to the rolls.—State Tax Commissioners v. Assessors, City of Grand Rapids, 124 M. 491.

A manufacturers' or belt line road subject to assessment if organized under train railroad act.—City of Detroit v. Detroit Manufacturers' Railroad, 149 M. 530.

The Board of State Tax Commissioners has no power to fix the compensation of clerks and assistants employed by it. Such power is lodged in the Board of State Auditors and their judgment in the matter is not subject to review.—Warner v. Board State Auditors, 128 M. 500.

Where an assessment of a city is made by one central board and the city is treated as a unit, the state tax commission may treat the city as a unit on equalization and need not make the equalization by wards.—Auditor General v. Griffin, 140 M. 427.

Report to Governor.

SEC. 151. (4150) The Board of State Tax Commissioners shall on or before the fifteenth day of December preceding each regular session of the Legislature, make a report to the Governor of the State, setting forth the workings of said commission during the period covered by said report, and containing the findings and recommendations of said commission in relation to all matters of taxation. The board of State Auditors shall cause to be printed as many copies thereof, not exceeding five thousand, as the said board shall deem necessary.

History:—Added 1899, p. 232, Act 154, Imd. Eff. June 23;—Am. 1913, p. 270, Act 153, Eff. Aug. 14.

Assessment rolls, inspection of.

SEC. 152. (4151) After the various assessment rolls required to be made under this act or under the provisions of any municipal charter shall have been passed upon by the several boards of review, and prior to the making and delivery of the tax rolls to the proper officer for collection of taxes, the said several assessment rolls shall be subject to inspection by said Board of State Tax Commissioners or by any member or duly authorized representative thereof and in case it shall appear to said board after such investigation, or be made to appear to said board by written complaint of any taxpayer, that property subject to taxation has been omitted from or improperly described upon said roll or individual assessments have not been made in compliance with law, the said board may issue an order directing the assessor whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered at a time and place to be stated in said order, said time to be not less than seven days from the date of the issuance of said order, and the place to be at the office of the board of supervisors at the county seat or at such other place in said county in which said roll was made as said board shall deem most convenient for the hearing herein provided. A copy of said order shall be published in at least one newspaper published in said county, if there be any, at least five days before the time at which said assessor is required to appear; and where practicable, personal notice by mail shall be given prior to said hearing to all persons whose assessments are to be considered. A copy of said order shall also be served upon the supervisor or assessing officer in whose possession said roll shall be at least three days before he is required to appear with said roll. The said board, or any member there-

When reviewed.

Notice.

Hearing, etc.

of, shall appear at the time and place mentioned in said order, and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected or liable to be affected by review of said assessments thus provided for may appear and be heard at said hearing. In case said board, or member thereof, who shall act in said review, shall determine that the assessments so reviewed are not assessed according to law, he or they shall, in a column provided for that purpose, place opposite said property the true and lawful assessment of the same. As to the property not upon the assessment roll, the said board, or member thereof acting in said review, shall place the same upon said assessment roll by proper description and shall place thereafter, in the proper column, the true cash value of the same. As to property not properly described upon the assessment roll, the said board, or member thereof acting in said review, shall make such change in the description of the property assessed as is found necessary. Said board shall also spread upon said roll a certificate, signed by each member officiating at the review proceedings, showing the day and date on which said assessment roll was reviewed. For appearing with said roll as required herein the supervisor or assessing officer shall receive the same per diem as is received by him while in attendance at the meeting of the board of supervisors, to be presented to and paid by the proper officer of the municipality of which he is the assessing officer in the manner as his other compensation is paid. The action of said board or member done as provided in this act shall be final. When the assessment of any property has been reviewed by said board as herein authorized, such assessment shall not be changed for a period of three years, where the property remains substantially the same, without the written consent of said board. Whenever it becomes necessary for said board to review the assessment of all property in an assessing district and such review results in a change of more than fifteen per cent above or below the aggregate amount approved by the board of review of said assessing district, all expense incident to said review, including salaries and expenses of the representatives of said board while actively engaged in preparing for and conducting such review, shall be paid by the district reviewed. The said board shall submit a certified statement in detail of the expense so incurred to the Auditor General, who shall forthwith charge same to the county, and the board of supervisors of the county at its regular October meeting next following shall order same included in the taxes to be levied in the assessing district so reviewed for the current year, and paid to said board not later than the first day of March next following.

Determining of assessments.

Corrections, etc., in roll.

Action final.

When district to pay expense of review.

Certified statement, to whom made.

Tax levy.

History:—Added 1899, p. 232, Act 154, Imd. Eff. June 23;—Am. 1905, p. 437, Act 281, Eff. Sept. 16;—Am. 1909, p. 12, Act 8, Eff. Sept. 1;—Am. 1911, p. 24, Act 17, Eff. Aug. 1;—Am. 1913, p. 270, Act 153, Eff. Aug. 14;—Am. 1921, p. 495, Act 265, Eff. Aug. 18.

The Board of State Tax Commissioners may change and correct the valuation of property, made by the board of review, and may add to the assessment roll property omitted therefrom, and it is the duty of the assessor to spread the taxes on the roll according to the valuations as changed by the State Board of Tax Commissioners: Held, that the term "board of review," in Sec. 39, applies to the local board or the State board, as circumstances require, and where the state board had changed the valuations, the taxes should be assessed according to the valuations so changed.—State Tax Commissioners v. Quinn, 125 M. 128.

After the time when the tax roll is made, and placed in the hands of the city treasurer there is no authority in the board to increase or reduce the assessment.—State Tax Comrs. v. Cady, 124 M. 683.

The Board of State Commissioners has the power at any time prior to the equalization and apportionment of State and county taxes, to review the assessments and add to the rolls assessments against persons, or property omitted therefrom, provided the same is done according to the provisions of the statute.—Bialy v. City of Bay City. 139 M. 495.

A notice published by the State tax commissioner dated May 13th of a hearing to review assessments to be held May 18th is sufficient five days notice.—City of Port Huron v. Wright, 150 M. 279.

It will be presumed that the members of the tax commission exercise honesty and their best judgment in performing their official duty; the burden of proof is on the plaintiff in an action to recover back taxes, paid under protest, to establish fraud, which cannot be inferred from a mere difference in judgment.—Island Mill Lumber Co. v. City of Alpena, 176 M. 575.

The Board of State Tax Commissioners have the right to inspect tax rolls after they have been passed on by the various reviewing boards, and, if the investigation warrants, may issue an order to the assessor whose rolls are under review to appear with his assessment rolls, and the board is authorized not only to inspect and investigate the rolls but also to examine witnesses and documents.—Board of Tax Commissioners v. Kohler, 193 M. 420.

Clerical assistance.

SEC. 153. (4152) In addition to the secretary and chief clerk said board may employ such other clerical assistance as may be necessary and required to perform the duties imposed upon it by this act. The average compensation paid for such clerical assistance shall not exceed one thousand dollars per annum for each clerk employed: *Provided,* That said board may employ such expert assistance as may from time to time be necessary and essential to a proper exercise of the powers and performance of the duties prescribed in this act. The compensation for such expert assistance shall be fixed by said board at such amount as shall be approved by the board of state auditors: *Provided,* That the compensation herein authorized and all other necessary expenses incurred in carrying out the provisions of this act shall be allowed by the Board of State Auditors upon proper vouchers approved by the president and secretary of the board and paid by the state treasurer out of the general fund.

Expenses allowed by Board of Auditors.

History:—Added 1899, p. 233, Act 154, Imd. Eff. June 23;—Am. 1905, p. 438, Act 281, Eff. Sept. 16;—Am. 1911, p. 25, Act 17, Eff. Aug. 1.

Order of the Board of State Tax Commissioners for a general and special review held to have complied with Secs. 152 and 153, as to the form and publication, and not void by reason of being set for the same date. Where a review of a roll by the Board of State Tax Commissioners is held on a day other than the day advertised, such action is void.—Bialy v. City of Bay City, 139 M. 495.

Board may direct assessors to include property not assessed in former years.

SEC. 154. (4153) If it shall be made to appear to said board at any time that any property liable to taxation has not been assessed for any previous year as herein provided, the said board shall report the same to the proper assessing officer and the same shall be listed for taxation upon the next assessment roll that shall be made, and shall be valued as all other property. The said board shall further certify to the board of supervisors of the several counties at the October session thereof, next after said property shall be then listed for taxation, the description of said property and the several years that the same has been liable for and escaped taxation, and said board of supervisors shall ascertain the rate of taxation, for said several years and shall order the taxes for said years to be spread against said property upon the valuation for the then current year, and the same shall be so spread in a column provided for that purpose, and it shall constitute a charge against the person and property, and be collected as other taxes: *Provided further,* That this provision shall not be deemed to relate back prior to the going into effect of this section: *And provided further,* That in case of change in ownership of the property omitted, said taxes shall not be spread against said property prior to the last change of ownership.

Supervisors to ascertain rate.

Proviso.

History:—Added 1899, p. 234, Act 154, Imd. Eff. June 23;—Am. 1905, p. 438, Act 281, Eff. Sept. 16.

Act 154, Laws of 1899, creating a Board of State Tax Commissioners gives such board the power to add property to the roll for purposes of city taxation.—Detroit United Raliway v. Board of State Tax Commissioners, 136 M. 96.

SEC. 155. (4154) It shall be unlawful for any person, copartnership, company or corporation to cut or attempt to cut any standing timber growing upon lands in this State upon which the taxes remain unpaid from and after the tenth day of January succeeding that at which the tax was assessed, and before said lands are bid off to the State for non-payment of taxes, or to remove any timber, wood, logs or buildings therefrom.

Trespass.

History:—Added 1901, p. 71, Act 46, Eff. Sept. 5.

SEC. 156. (4155) If any person, co-partnership, company or corporation shall cut any standing timber growing upon any lands in this State upon which the taxes remain unpaid, after the same have become due and have been returned to the county treasurer, and before said lands are sold for the non-payment of taxes, or if any person, co-partnership, company or corporation shall remove any timber, wood or logs, or tear down or remove any buildings from any such lands within the time above mentioned, it shall be the duty of the county treasurer of the county where such lands are situated to issue a warrant under his hand and seal in the name of the people of the State of Michigan, directed to the sheriff of the county in which such lands are situated, giving therein a description of such lands, the amount of such taxes due and remaining unpaid, with interest and charges thereon, as provided by law, commanding such sheriff forthwith to seize such timber, logs, wood or buildings, or in case such buildings have been torn down, the lumber and other building material of the same, wherever the same may be found in any county in this State, and to sell the same or a sufficient quantity thereof to satisfy such taxes, with interest and charges thereon, and the cost of such seizure and sale. The sheriff shall receive such warrant and execute the same as therein directed as in the case of levy and sale on execution, and make due return thereof with his doings thereon to the county

Trespass by removing timber or buildings.

County treasurer to issue warrant to sheriff.

Sheriff to execute warrant and make return.

treasurer within thirty days after the receipt of the same, and pay over all moneys collected thereon to the county treasurer, who shall apply the amount so collected to the payment of taxes on the lands described in said warrant, together with the interest and charges thereon, and the costs of such seizure and sale. In case the moneys received from any such sale shall exceed the amount necessary to pay all such taxes due and payable, together with interest and charges thereon, and the costs of such seizure and sale, all sums so received, over and above the amount necessary to pay such taxes, together with the interest and charges thereon and the costs of such seizure and sale, shall be held by the county treasurer subject to the order of the person, co-partnership, company or corporation owning said lands.

Disposal of money collected.

History:—Added 1901, p. 71, Act 46, Eff. Sept. 5.
Timber cut upon lands which are delinquent for taxes is subject to levy under county treasurers' warrant for the collection of such taxes.—Broadwell v. Walker, 216 M. 210.

County treasurer to obtain injunction to restrain waste.

Sec. 157 (4156) When any person, co-partnership, company or corporation shall neglect or refuse to pay any tax assessed on the lands of such person, co-partnership, company or corporation after such taxes shall have become due and have been returned to the county treasurer, and before said lands are sold for the non-payment of taxes, the county treasurer shall make application for and be entitled to an injunction to restrain waste on any of such lands upon which the taxes shall remain unpaid, and to prevent the cutting of any timber standing or growing thereon or the removal of any timber wood or logs, or the tearing down or removing of any buildings therefrom. Any circuit judge or circuit court commissioner of the county in which such lands are situated may on application of such county treasurer make an order restraining any person, co-partnership, company or corporation from committing waste on any such lands by the cutting of any timber standing or growing thereon or the removal of any timber, wood or logs, or the tearing down or removal of any buildings therefrom. The right of the county treasurer to a writ of injunction shall not be lost or impaired by reason of any failure or neglect on the part of the township treasurer or other collecting officer to collect the above unpaid taxes.

Injunction not to be impaired by failure to collect taxes.

History:—Added 1901, p. 72, Act 46, Eff. Sept. 5.

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TAXATION ACTS OF 1909, 1911, 1913, 1915, 1917, 1919 AND 1921, OTHER THAN THOSE AMENDING THE GENERAL TAX LAW.

ACT NO. 84 OF 1909.

Exemption of armories, bonds, etc., from taxation.

Sec. 64. (939) Armories erected by counties, cities, private corporations, corporations composed of national guard companies or private individuals, and used by organizations of the permanent organized militia, shall be exempt from all taxes, ordinary or extraordinary, whether levied by the state or by counties by municipalities, the same as other state property is exempt. Bonds, mortgages and other certificates of indebtedness made and issued by any municipality, organization or private individual for the purpose of erecting armories under this act, shall not be assessed or taxed as personal property for any purpose, when held by any person within the state of Michigan.

NOTE.—This section exempts from taxation armory buildings and also exempts from taxation as personal property bonds, mortgages and other certificates of indebtedness secured by armory property.

ACT NO. 140 OF 1915.

Return of unpaid taxes.

Sec. 18. (2743) Within one week after the expiration of the time limited in the warrant for the collection of the taxes levied in said roll or within one week after the time to which said warrant may have been renewed or extended, if the treasurer has been unable to collect any of the taxes on his roll on real property, it shall be his duty to return all such unpaid taxes on real property to the county treasurer in the same manner and with like effect as returns by township treasurers. The taxes thus returned shall be collected in the same manner as other taxes returned to such county treasurer are collected under the provisions of the general tax laws of the State, and the same rate of interest and amount of charges shall be collected thereon, and all taxes upon lands so returned upon lands as delinquent shall be and remain a lien thereon until paid: Provided, That the county treasurer shall at the time that he makes his return to the Auditor General of delinquent taxes assessed under the general tax law, also make a return of all village taxes that were returned delinquent to his office and remaining unpaid on the first day of March of the year in which the return is made.

Collection.

Lien.

Proviso, return of village taxes.

This amendment provides for the return by the county treasurer of delinquent village taxes at the same time that other delinquent taxes are returned.

ACT NO. 128 OF 1913.

Certain taxes cancelled.

Sec. 1. (4187) The Auditor General is hereby authorized and empowered to cancel all taxes remaining undischarged as appears from his books, and the records of his office, assessed or reassessed upon any lots or blocks, or fractions of lots, of any city, village or township plat, where there has been judicial or legislative action vacating said plat, prior to January first, nineteen hundred thirteen, and where such are now being assessed by governmental subdivisions.

ADDED BY ACT NO. 208 OF 1913.

Cut-over, etc., lands exempt from taxation.

Sec. 1. (4192) Hereafter any cut-over or wild lands, as defined herein, which shall be actually purchased by any person for the purpose of making a home, shall be exempt from the payment of all taxes for a period of five years thereafter. Cut-over and wild lands shall be construed to mean any swamp land or land from which timber has been removed and no part of which description claimed to be exempted has ever been cultivated. The exemption herein provided for shall not be operative in any case, unless the purchaser, either upon contract or otherwise, actually resides upon and improves at least two acres thereof each and every year of the said five years in a manner to subject the same to cultivation: Provided, That the exemption herein provided for shall not extend to more than eighty acres purchased by any one person.

Proviso.

Application for exemption.

Sec. 2. (4193) Any person claiming exemption under this act shall make application to the supervisor for exemption at the time assessment of the township is made, and the supervisor shall enter the person's name upon the assessment roll and the description of the land the same as though taxes were to be spread upon the land, and refer the application to the board of review of the township, who shall if the conditions entitling exemption have been complied with, order to be written after the description "Exempt under the cut-over and wild land act, first year," and each subsequent year thereafter if the conditions have been complied with, but using second year, third year, fourth year, fifth year successively, after which the land shall no longer be exempt under this act.

This act provides for the exemption from taxation for the period of five years under certain conditions of any cut-over or wild lands.

ACT NO. 88 OF 1909.

Bonds exempt from taxation.

Sec. 1. (4194) All bonds hereafter issued by any county, township, city, village or school district within the state of Michigan pursuant to statute are hereby exempted from all taxation.

Acts repealed.

Sec. 2. (4195) All acts and parts of acts inconsistent herewith are hereby repealed.

ACT NO. 225 OF 1913

When auditor general shall accept payment of portion of tax.

Sec. 1. (4198) Whenever any person, firm or corporation, owning or claiming to own one or more government subdivisions of land or one or more lots or blocks included within the limits of any township, village or city plat included in the assessment with other government subdivisions of land or with other lots or blocks upon the tax roll, shall make an affidavit, or cause said affidavit to be made by any person having knowledge of the facts, to the Auditor General, setting forth that the said person, firm or corporation owns at the time of making said affidavit the said government subdivision of land or said lot, lots or blocks and that the same has been included upon the assessment roll and has been sold and is held as state tax land with other government subdivisions of land or with other lots or blocks and that the said affiant is desirous of paying all the taxes assessed against said land, and upon tender by such person, firm or corporation to the Auditor General the proportionate amount of taxes, interest and charges accrued against said description of land as appearing by the tax lists and records at the time said tender or payment and affidavit is made, it shall be the duty of the Auditor General upon payment, to issue to such person, firm or corporation, as aforesaid, a deed of the description or descriptions of land described in such affidavit.

Auditor general to issue deed.

This act provides that where several government subdivisions or several lots or blocks in any plat are held as State Tax Land as one description, the owner of any of the government subdivisions or lots or blocks may purchase the part owned by him without being required to purchase the entire description.

A purchase by a claimant of the title to real property from the State upon a false affidavit of ownership does not inure to the benefit of the former owner as a redemption.—Embury vs. Goodenough, 157 M. 140.

ACT NO. 70 OF 1911.

Steam vessels, etc., tonnage tax.

Sec. 1. (4248) In consideration of an annual payment into the state treasury by the owner of any steam vessel, steam barge or steam boat engaged in the carrying of passengers, holding license for such purpose, or carrying passengers and freight, owned within this State or hailing from any port thereof, and employed in the navigation of international waters or waters of the Great Lakes, of a sum equal to twenty cents per net ton on the registered tonnage thereof, and the annual payment into the state treasury by the owner of any steam vessel, steam barge or steam boat engaged in the carrying of freight only, owned within this State or hailing from any port thereof and employed in the navigation of international waters, of a sum equal to ten cents per net ton on the registered tonnage thereof, such payment shall be received in lieu of all taxes, and such steam vessel, steam barge or steam boat shall be and the same is hereby made exempt from all further taxation, either state, county or municipal, upon the payment of the sums herein provided.

Payment of taxes under this section construed as payment for taxes of next succeeding year.—Mackinaw Transportation Co. vs. Township of Mackinac, 175 M. 418.

Verified statement, what to contain.

Sec. 2. (4249) The owner of any steam vessel, steam barge or steam boat hailing from any port of this State and employed in the navigation of international waters or waters of the Great Lakes, to comply with the terms of this act, shall annually, on or before the first day of December, file with the Auditor General a verified statement in writing containing the name, port of hail, tonnage and name of owner of such steam vessel, steam barge or steam boat, and shall thereupon pay into the state treasury a sum equal to ten cents for freighter or twenty cents for passenger boat per net ton on the registered tonnage of said vessel, and the said treasurer shall thereupon issue his receipt therefor.

Money, where paid.

Sec. 3. (4250) The said State Treasurer shall annually, on or before the first day of December, pay into the county treasury of any county wherein is located the port of hail of any steam vessel, steam barge or steam boat complying with this act, all money so received from any steam vessel, steam barge or steam boat whose port of hail is within said county. The county treasurer of said county shall then pay to the city or township wherein is located the port of hail of said steam vessel, steam barge or steam boat such proportion of said money or tax as the amount of state and county tax paid by said city or township bears to the whole state and county tax in said county, as fixed and determined by the board of supervisors of said county at the annual meeting of said supervisors at which said board equalizes and apportions the amount of taxes that shall be paid by such city or township for state and county purposes, and the balance shall be retained by said county treasurer for state and county purposes, in proportion to the amounts said state and county are each entitled to under such apportionment by said board of supervisors.

NOTE.—The act provides for a tonnage tax on steam water craft and is by implication an amendment to subdivision 4 of section 8 of the general tax law. Boats paying taxes under this act are not subject to assessment under the provisions of the general tax law.

This act takes effect August 1, 1911.

MINERAL RESERVATION ACT

ACT NO. 51, P. A. 1911.

Mineral, etc., rights, assessment of.

Section 1. All mineral, coal, gas, salt, gypsum, oil, mining or other rights in or to any lands within this state, or to the ores, oils, gravel, valuable deposits or minerals contained therein which shall heretofore have been or shall hereafter be reserved in any conveyance of such lands, the interest so reserved shall be valued and assessed against the owner at the true cash value as an interest in real estate by the assessors of the assessment district where such lands are situated at the time of making the annual assessment of the property within such assessment district, and the interests in said lands so reserved and so valued and assessed shall be placed and entered upon the assessment roll of such assessment district, and shall be subject to taxation as an interest in real property at the same rate and subject to all the provisions of the laws of this state relating to the assessment and taxation of real property and providing for the collection of the taxes as levied and assessed against the same. The taxes so levied and assessed against such interest shall become a lien thereon in the manner provided by law in the case of taxes assessed and levied against real property, and may be enforced by the sale of such reserved rights as an interest in real estate in the manner provided for by the laws of this state for the enforcement and collection of taxes against real property.

Taxes to be lien.

Section 2. In all cases where in the conveyance of real property within this state any such interest is reserved, the interest reserved and the interest conveyed shall be assessed and valued for the purposes of taxation as separate interests in the lands described, and in case of default of payment of the taxes levied and assessed against the same, and it shall become necessary to sell such property in the manner provided by law to enforce such taxes, the interest in such lands belonging to different owners shall be sold separately and the sale of any such separate interests shall not affect any other interest therein belonging to a different owner or owners.

Interest, assessment of.

Section 3. The owner of any separate interest in any such lands may become a purchaser at any tax sale of any other interest therein, and shall be entitled to hold the interest so acquired for his own use and benefit, and shall not be held to have acquired such interest for the joint benefit of himself and the owner of any other interest therein and the owners of such separate interests shall not be held to be tenants in common of the said lands, but such separate interests shall be held to be separate and distinct interests therein.

Owner may purchase at tax sale.

Section 4. In the event of said land not being redeemed within the time limited by law for the redemption of real property and the state shall acquire title to such mineral right or reservation, the right so acquired shall not be sold or disposed of, except in the manner provided by law for the disposition of ores and mineral, coal, gas, salt, gypsum and oil contained in public lands belonging to the state or by way of lease, the lessee of such mineral right to yield and pay a stipulated royalty upon all ores and minerals mined from such lands, the income derived from which shall be paid into the state treasury and become part of its public funds.

When land not redeemed.

Section 5. It shall be the duty of the auditor general or of some other state officer designated by law, upon the expiration of the period within which real property sold for taxes may be redeemed by the owner and upon the expiration of which period a purchaser would under the law become entitled to a conveyance of the lands so purchased, to immediately give notice to the owner of such mineral, coal, gas, salt, gypsum, oil or mining right and to the owner of any

Mineral right, notice of sale of.

other interest therein that the said mineral right or reservation was purchased at such tax sale and that the same must be redeemed by the payment of taxes and interest as provided by law for the redemption of real property, which notice shall be substantially in the form required to be given by purchasers of real property at any tax sale thereof pursuant to the laws of this state, and in case such mineral right or reservation in the lands in such notice described shall not be redeemed by the owner thereof within the time limited by law, the owner of the surface right or any other interest therein may redeem such reserved interest at any time within thirty days next after the expiration of the period within which the owner of such interest might have redeemed the same, and thereupon shall be entitled to a conveyance by the state of its interest therein, and thereafter both the ore and mineral rights reserved in such land and the fee thereof shall be held in the same right, and the said lands shall be valued and assessed as a whole. In case the mining or mineral rights so reserved in any such lands shall not be redeemed by the owner thereof or by the owner of any other interest therein, the title to such mineral right or reservation shall vest in and become the property of the state and shall be disposed of or held as provided for in section four of this act.

Redemption.

When title vested in state.

How assessed.

Section 6. In assessing such lands for the purpose of taxation the value of the right reserved as fixed by the assessor shall be deducted from the whole value of such lands as fixed by him, and only the difference between the value of such reserved interest and the whole value of said lands as so fixed shall be assessed against the owner of the surface right, fee or the remaining interest therein.

Right, value of, owner to make return.

Assessment.

Statement not binding.

Proviso.

Section 7. The assessing officer of the several assessment districts of this state may require the owner of any such mineral or mining right in any lands of this state to make return under oath to him of the value of such mineral right and the value at which the owner holds the same. It shall be the duty of the proper assessing officer of the territory or district in which such rights and the lands with which connected are situated, within the same time and in accordance with the method prescribed in the general tax law, to assess all such reserved rights at their true cash value. The statement of the owner of the value of such reserved rights shall in no wise be binding upon the assessing officer. Any person who refuses to furnish a sworn statement herein required shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to imprisonment not to exceed six months or a fine not to exceed one hundred dollars, or both such fine and imprisonment in the discretion of the court: Provided, however, Such assessment shall be made as, and shall be subject to, revision and review in the same manner and to the same extent as assessments of other property.

Act, purpose of.

Section 8. This act shall be considered as remedial legislation enacted for the purpose of equalizing taxation and subjecting all interest in lands thereto and shall be so held and construed.

Section 9. All acts or parts of acts inconsistent with or contravening the provisions of this act are hereby repealed.

Section 10. This act is immediately necessary for the preservation of the public safety.

Repealed.

ACT NO. 119 OF 1915

Act repealed.

Sec. 1. (4251) Act number fifty-one of the Public Acts of nineteen hundred eleven, entitled "An act to provide for the assessment, valuation and taxation of mineral, coal, gas, salt, gypsum, oil, mining or other rights reserved in or to any lands in this State or to the ores, minerals, coal, gas, salt, gypsum and oil contained therein against the owner thereof as an interest in real property in any and all cases where any mineral right in or to the ores, oils, mine, valuable deposits, minerals contained therein, shall be or shall heretofore have been reserved to the grantor or any other person in any conveyance thereof," is hereby repealed.

Taxes to be cancelled.

Sec. 2. (4252) The Auditor General is hereby authorized, empowered and directed to cancel all taxes remaining undischarged as appears from the records of his office or that may be hereafter returned to his office upon the assessment of mineral, coal, gas, salt, gypsum, oil, mining or other rights reserved in or to any lands in this State assessed and returned delinquent for such taxes under the provisions of act number fifty-one of the Public Acts of nineteen hundred eleven.

Sales to be cancelled.

Proviso, refunding purchase price.

Sec. 3. (4253) The Auditor General is hereby authorized to cancel the sale of any and all mineral reservations heretofore or hereafter made under the provisions of act number fifty-one of the Public Acts of nineteen hundred eleven: Provided, That in case any such mineral reservations are sold to any individual, firm or corporation, it shall be the duty of the Auditor General after the cancellation of such sales, to refund to such purchaser the amount paid to purchase, together with interest thereon from the date of purchase to the date of cancellation at the rate of six per cent per annum.

Loss, how stood.

Sec. 4. (4254) That upon the cancellation of the amount of such taxes, the State, county, township, city or village shall stand the loss of their portion of such taxes.

This act repeals Act No. 51, P. A. 1911, known as the mineral reservation act.

ACT NO. 91 OF 1911.

Indebtedness, certain, taxable. "Mortgage," what to include.

Sec. 1. (4268) For the purposes of this act all indebtedness secured by liens upon real property shall constitute that class of credit upon which this act imposes a specific tax. The word "mortgage" as used herein shall include every mortgage or other instrument by which a lien is created over or imposed upon real property, notwithstanding it may also be a lien upon other property, or there may be other security for the debt, and shall also include executory contracts for the sale of real property, and deeds or other instruments that are given to secure debts.

The specific tax on mortgages and land contracts is in lieu of all general taxes, including special assessments.—Union Trust Co. vs. Common Council of the City of Detroit, 170 M. 692.

A land contract, executory in character, reserving to the vendor the legal title, creates a lien on real estate, and is subject to the mortgage tax law.—Nelson vs. Breitenwischer, 194 M. 30.

Taxation of mortgages and land contracts to their full value in addition to the assessment of the real estate, is not double taxation.—Id.

The provision exempting building and loan mortgages from the mortgage tax does not exempt from taxation.—Ross vs. Stoll, 199 M. 561.

Tax, amount of.

Proviso, library, etc.

Proviso, fraternal societies.

Further proviso, church, etc.

Further proviso, building and loan.

Sec. 2. (4269) A tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of the principal debt or obligation which is, or under any contingency may be, secured by a mortgage upon real property situated within this State recorded on or after the first day of January, nineteen hundred twelve, is hereby imposed on each such mortgage, and shall be collected and paid as hereinafter provided: Provided, That no tax shall be imposed upon any debt or obligation which is, or under any contingency may be, secured by a mortgage upon such real estate as shall be owned and occupied by library, armory, benevolent, charitable, educational and scientific institutions, incorporated under the laws of this State, with the buildings and other property thereon, while occupied by them solely for the purposes for which they were incorporated: Provided, That such exemption shall not apply to fraternal or secret societies, but all charitable homes of such societies shall be exempt: Provided further, That no tax shall be imposed upon any debt or obligation which is, or under any contingency may be, secured by a mortgage upon any house of public worship with the land on which it stands, the furniture therein and all rights in the pews, and upon any parsonage, owned by any religious society of this State and occupied as such; which such mortgage is recorded on or after the first day of January, nineteen hundred twelve: Provided further, No tax shall be imposed upon any building and loan mortgage. The tax imposed by this section shall be in addition to the recording fee now provided for by law.

In computing the amount of the tax to be paid on the amount owing on a land contract, the county treasurer is to be guided by the face of the instrument, and where that instrument shows that the down payment was paid before the execution of the contract, the amount thereof should be deducted from the purchase price, and the tax computed on the balance.—Shupert vs. Ingham Co. Treas., 214 M. 333.

Sec. 3. (4270) The tax imposed by this act shall be paid to and collected by the treasurer of the county where such mortgage is first presented for record, in the manner following: Before said mortgage is received by the register of deeds for recording it shall be presented to the county treasurer, who shall as one of his official duties, compute and collect the taxes due thereon as provided by this act, and shall certify on said mortgage the amount secured thereby and the amount of taxes received by him. Said certificate shall be recorded by the register of deeds as a part of the record of said mortgage. If said mortgage is given wholly or partly as an indemnity, the mortgagee or owner thereof, shall attach thereto an affidavit showing the greatest amount for which it can, under any circumstances, become security, and the taxes shall be paid upon that amount, and no greater sum can be collected on said mortgage. Such certificate shall not be required with any mortgage made to indemnify the mortgagee as surety, or to secure the performance by the mortgagor of any contract which does not require the payment of a specified sum of money, nor with any mortgage made to correct or perfect a mortgage previously recorded, on which the charges imposed by this act have been paid, if no new or additional indebtedness is created thereby. For a wilful misstatement of the amount for which said mortgage can, in any event, become security, said mortgagee or the owner of said mortgage shall be deemed to have subjected himself to the pains and penalties of perjury.

How paid, etc, computing, etc.

Certificate, recording of.

Wilful misstatement.

The mortgage tax is to be computed upon the amount shown upon the face of the instrument to be owing, and if that fails to show the first payment to have been made before the execution of the instrument, then the tax must be paid on the full consideration therein.—Detroit Land Contract Co. vs. Green, 202 M. 464.

Endorsements on the back of a land contract are no part of it, and should not be considered by the treasurer in computing the tax.—Id.

Sec. 4. (4271). Am. Act 213 of 1921. If the mortgage shall cover and describe real property situated partly within and partly without this State, then there shall be included in or attached to said mortgage a statement of the value of said property located in this State and of the value of said property located without this State. The mortgagor shall take oath, which may be administered in the acknowledgment of said mortgage, that the values placed upon the property covered by the mortgage are the true values thereof, to the best of his knowledge and belief, and for a wilful misstatement of any such values he shall be deemed guilty of perjury. When the real property covered by said mortgage is located partly within this State and partly without this State, the mortgage shall, before being presented for record in any county in this State, be submitted to the Board of State Tax Commissioners, and it shall be the duty of said board to determine what proportion shall be taxable under this act, by determining the relative value of the mortgaged property within this State as compared with the total value of the entire mortgaged property taking into consideration

Property partly without the state.

When mortgage submitted to tax commissioners.

in so doing the amount of all prior incumbrances upon such property or any portion thereof. Notice to mortgagor, etc. The said Board of State Tax Commissioners shall cause notice to be served upon the mortgagor and the mortgagee in the manner hereinafter provided, and not less than ten days thereafter shall proceed to determine what proportion of the principal indebtedness secured by the mortgage shall be used as the measure of taxation within this State under the provisions of this act. Form. The notice aforesaid shall be in manner and form as follows:

To the mortgagor and mortgagee named in the within described mortgage.

Take notice, That on the .... day of .... Anno Domini nineteen hundred ...., the Board of State Tax Commissioners of the State of Michigan, will meet in the offices of said commission at Lansing, Michigan, at .... o'clock a. m. (p. m.) to determine what proportion of the principal indebtedness secured by the mortgage given under date of .... by .... to .... shall be used as the measure of taxation within this State under the provisions of act number ninety-one of the Public Acts of nineteen hundred eleven, and that you are entitled to attend such meeting and to testify as to the correctness of the values placed upon the property included in said mortgage.

(Description)

BOARD OF STATE TAX COMMISSIONERS.
By ....
Secretary.

Service of. The service of the said above notice shall be by registered mail and the said Board of State Tax Commissioners shall retain in its files the postmaster's receipt for same. If the person or persons entitled to said notice are dead, or if their estate shall be under control of a trustee or guardian, then and in such case notice as hereinbefore provided shall be served upon the executor or administrator of said deceased person or persons, or upon his or their heirs if there be no executor or administrator, or upon the trustee or guardian of any incompetent person with like effect as if served upon the mortgagee or mortgagor. Separate values, how determined. In determining the separate values of the property covered by any such mortgage within and without this State for the purpose of ascertaining the proportion of the principal indebtedness secured by the mortgage which is taxable under this act, the Board of State Tax Commissioners shall consider only the value of the tangible property covered by such mortgage, taking into consideration in so doing the amount of all prior incumbrances thereon. For the purpose of determining such value, the Board of State Tax Commissioners may require the mortgagor or mortgagee or both to furnish the board by affidavit or verified report, such information or data as it deems necessary for such purpose, or the board may take the testimony of the mortgagor or any other person in relation thereto, and if any person whose testimony is desired can be found within this State, may require him by subpoena to attend before the board at a specified time and place for the purpose of testifying in relation to the values of such property. When said Board of State Tax Commissioners shall have determined the amount of tax due on said mortgage, said board shall file notice in writing of such determination with the treasurer of the county in which the mortgage will first be presented for record and to the register of deeds or recording officer of each county in which any part of the mortgaged property in this State is situated, and said board shall forthwith serve notice of said determination in writing upon the mortgagor and mortgagee in the manner hereinbefore specified for serving notice of examination by said Board of State Tax Commissioners and in form as hereinafter provided, and said mortgage upon which said tax is due shall not be received for record until the tax determined upon by the Board of State Tax Commissioners, shall have been paid in full. The Board of State Tax Commissioners shall adopt rules to govern their procedure, and the manner of taking evidence in these matters, and may require certified statements to be furnished by the board of assessors or register of deeds or recording officer of the respective counties in relation thereto. The provisions of this section relating to the refusal of receiving a mortgage for record until the tax thereon has been paid in full shall not apply to mortgages made in trust to secure payment of bonds or obligations issued or thereafter to be issued, when only a partial amount of the indebtedness has been advanced thereon at the time of presentation for record. The aforesaid notice of the determination of the Board of State Tax Commissioners shall be in form as follows:

Notice of determination, filing of.

May adopt rules.

Notice of determination, form of.

To the mortgagor of the within described instrument:

Take notice, That the tax upon the mortgage (deed of trust or other instrument) given under date of .... by .... to .... has been determined by this board to be.................. .... Said instrument will not be admitted to record in any county in the State of Michigan until said tax shall have been paid and discharged.

BOARD OF STATE TAX COMMISSIONERS.
By ....
Secretary.

Sec. 5. (4272) Am. by Act 213 of 1921; Am. by Act 246 of 1923. In case of mortgages made in trust to secure payment of bonds or obligations issued or to be issued thereafter, if only a partial amount of the indebtedness has been advanced thereon at the time of presentation for record, such

Mortgages made in trust.

mortgage shall, at the end thereof, contain a sworn statement of the amounts advanced thereon and secured thereby, and the tax herein provided shall be computed on that basis. When a further amount is about to be advanced thereon or become secured thereby the mortgagee shall immediately notify the board of state tax commissioners and it shall be the duty of said board to determine the amount of tax to be paid thereon in the same manner as provided herein for determination of the original tax thereon. The treasurer and recording officer of the county in which the original tax was paid shall be notified of such determination by the secretary of said board and the tax shall thereupon become due and payable and shall be paid in the same manner as the original tax on said mortgage. If such additional tax is not paid as required by this section such trust mortgage and evidence of indebtedness, bonds or securities secured thereby shall be unenforceable until said tax is paid and such additional tax shall draw interest at the rate of one per cent per month from the date when the first became due. On or before the tenth day of January in each year thereafter the mortgagor shall file a sworn statement with the board of state tax commissioners, setting forth the amount of bonds issued during the preceding calendar year under the provisions of said mortgage, the total amount of bonds issued under said mortgage and the amount of such bonds outstanding on the first day of January of the year in which such report is made. No trust mortgage shall be discharged until the trustee therein shall have filed an affidavit that all taxes for which such mortgage is liable have been duly paid. Any person making a false affidavit under this provision shall be liable to prosecution for perjury.

When further amount advanced, etc.

When additional tax unpaid.

When discharged.

Where a Michigan corporation executed a blanket trust mortgage securing bonds which were only partly issued prior to January 1, 1912, and thereafter issued more bonds and increased its mortgage indebtedness in pursuance of provisions in the trust instrument on the basis of other property purchased, it was not entitled to have a supplemental instrument, reciting the original trust arrangement and covering the subsequently acquired property placed on record without paying the entire tax on the whole amount of bonds issued.—Economy Power Co. v. Daskam, 174 M. 402; Steel and Tube Co. of America v. Bd. of State Tax Coms., 225 M. 59.

When recorded before act effective.

Sec. 6. (4273) The owner of any mortgage which is now, or which may be recorded before this act takes effect, may present to the county treasurer of the county in which said property is situated an affidavit setting forth the mortgage and the place of record thereof and the amount of principal secured thereby which is unpaid, and may pay a like tax of one-half of one per cent upon such amount, and thereafter said mortgage for the purpose of taxation is to be considered and treated the same as other mortgages provided for in this act. Said affidavit shall be recorded in the office of the register of deeds and shall be prima facie proof of the amount of the principal unpaid on said mortgage. Mortgages given prior to January first, nineteen hundred twelve, and on which the registry tax provided for in this act shall not be paid, shall remain under the present ad valorem system of taxation and shall be assessed and taxed under the present law.

Taxes on a land contract executed before the taking effect of the mortgage tax law of nineteen hundred eleven, but not recorded prior to January first, nineteen hundred twelve, are to be computed on the amount appearing to be due on the face of said contract and not on the amount actually due as shown by an affidavit annexed to said contract.—Bowen v. Moeller, 171 M. 547.

Specific taxes, where credited.

Sec. 7. (4274) The county treasurer shall keep a separate account of said specific taxes collected by him and shall on the first day of each month, transmit to the State Treasurer one-half of the moneys in his possession belonging to that account, and the county treasurer shall credit to the general fund of the county the specific taxes collected by him as aforesaid. The State Treasurer shall place the same to the credit of the general fund, to be used for general State purposes.

Contract, when released, etc.

Sec. 8. (4275) No mortgage or land contract, which is subject to the tax imposed by this act shall be released, enforced, discharged of record or received in evidence in any action or proceeding at law or in equity, nor shall any assignment of or agreement extending any such mortgage or land contract be recorded until the tax imposed thereon by this act shall have been paid as in this act provided. No judgment or final order in any action or proceeding at law or in equity shall be made for the foreclosure or enforcement of any such mortgage or land contract, which is subject to the tax imposed by this act, or any debt or obligation secured thereby, until the tax imposed by this act shall have been paid as provided in this act. The certificate of the county treasurer in form as hereinafter provided, shall be prima facie evidence of the payment of the tax.

Certificate treasurer, form.

The certificate aforesaid shall read as follows:

State of Michigan, }ss.
County of..............}

I hereby certify that the tax due upon the mortgage given by ...., mortgagor to .... mortgagee, covering the property therein described and recorded on page .... of liber .... in the register of deed's office for the county of ...., State of Michigan, has been paid in full.

....
County treasurer for .... county, Michigan.

No mortgage on land contract, which is subject to the tax imposed by this act can be released, enforced, discharged of record, or received in evidence until the tax has been paid.—Nelson vs. Breitenwischer, 194 M. 30; Rodenhouse vs. DeGolia, 198 M. 402.

When property in more than one county.

Sec. 9. (4276) Where a mortgage covers property in more than one county in this State, the tax herein provided shall be paid in the county where the same is first presented for record and no tax shall be imposed or additional treasurer's certificate required for the purpose of recording such mortgage in any other county.

NOTE.—This act provides for a specific tax upon mortgages recorded on or after January 1, 1912. Such taxes may also be paid (at the option of the owner of such mortgage) on mortgages recorded prior to that date. Mortgages upon which taxes are paid under the provisions of this act are not subject to assessment under subdivisions 6 and 13 of the general tax law.

Credits exempted.

Sec. 10. (4277) Am. by Act 213 of 1921. All credits upon which this act imposes a specific tax shall, when such taxes have been fully paid, be exempt from further general taxes under the laws of this State. All acts and parts of acts in contravention of the provisions of this act are hereby repealed.

Conflicting acts.

Where the evidence shows that plaintiff, a banking firm, or co-partnership, had invested an amount of their capital stock in mortgages and land contracts, upon which the specific tax had been paid under the mortgage tax law, no additional tax could be imposed under the general tax law.—Bank of Tustin of J. M. Perry & Co. vs. Township of Burdell, 184 M. 131.

ACT NO. 139 OF 1913, AS AM. ACT 27, 1917.

Specific tax on certain negotiable bonds.

Sec. 1. (4278) In all cases where negotiable bonds are secured by a mortgage upon or trust deed of real or personal property, executed to a trustee for the benefit of the holders of the bonds mentioned, which mortgage or trust deed was recorded in Michigan prior to January first, nineteen hundred twelve, the holder of any bond or bonds thus secured may pay a specific tax of one-half of one per cent upon the principal mentioned in such bond as hereinafter provided.

Person desiring to pay may present bond.

Sec. 2. (4279) Am. Act 27 of 1917. The person desiring to pay such specific tax may present any bond as above described to the county treasurer of any county in which he resides or in which he may be, and pay to such county treasurer the tax of one-half of one per cent of the principal sum thereof, and the treasurer shall endorse upon such bond a certificate signed by him that such tax, stating the amount thereof and the date of payment, has been paid.

Endorsement on bond.

County treasurer to keep separate account.

Sec. 3. (4280) The county treasurer shall keep a separate account of said specific taxes paid to him and a record of the bonds on which the same are paid, and shall on the first day of each month transmit to the State Treasurer one-half of the moneys in his possession belonging to that account, and the county treasurer shall credit to the general fund of the county the specific taxes collected by him as aforesaid. The State Treasurer shall place the same to the credit of the general fund to be used for general state purposes.

Exempt from further tax.

Sec. 4. (4281) The bond on which such specific tax shall have been paid as above provided shall forever thereafter be exempt from further general taxes under the laws of this State, in the hands of whomsoever may hold the same.

This act provides for the payment of a specific tax on negotiable bonds secured by mortgage or trust deed where such mortgage or trust deed was recorded in this state prior to January 1, 1912.

The person desiring to pay such taxes must present the bond to the county treasurer, and the county treasurer must endorse on the bond the payment of the tax.

ACT 142 OF 1913, AS AM. BY ACT 173 OF 1917.

"Secured debts," what to include.

Sec. 1. (4282) The words "secured debts" as used in this act shall include:

(1) Any bond, note or debt secured by mortgage or real property recorded in any state or county other than Michigan, and not recorded in the State of Michigan.

(2) Any and all bonds, notes or written or printed obligations, parts of a series of similar bonds, notes or obligations, the payment of which is secured by a mortgage or deed of trust of real or personal property, or both, which mortgage or deed of trust is recorded in some place outside of the State of Michigan and not recorded in the State of Michigan.

(3) Any and all bonds, notes or written or printed obligations, forming part of a series of similar bonds, notes or obligations, which are secured by a deposit of any valuable securities, as collateral security for the payment of such bonds, notes or obligations, under a deed of trust or collateral agreement held by a trustee. The term "secured debts" as used in this act shall not include securities held as collateral to secure the payment of bonds taxable under this act.

Specific tax, amount, etc.

Sec. 2. (4283) Am. Act 173 of 1917. Any person may take or send to the office of the treasurer of the county where he resides, any secured debt as defined in section one of this act, or any bond or other obligation issued by any foreign country or by any state, county, township, city, village, school district, or good roads district or other governmental subdivision outside of this state and may pay to the county a tax of one-half per centum on the face value thereof and the treasurer shall thereupon endorse upon said secured debt or municipal bond a certificate that such tax, stating the amount thereof, has been paid and the date of such payment and certifying that the same is exempt from taxation, which endorsement shall be duly signed and dated by the treasurer or his duly authorized representative. The treasurer shall keep a record of such endorsements with a description of such secured debt or municipal bond, together with the name and address of the person presenting same and the date of registration.

Duty of county treasurer.

Sec. 3. (4284) The county treasurer shall keep a separate account of said specific taxes collected by him, and shall on the first day of each month, transmit to the State Treasurer one-half of the money in his possession belonging to that account, and the county treasurer shall credit to the general fund of the county, the specific taxes collected by him as aforesaid. The State Treasurer shall place the same to the credit of the general fund, to be used for general state purposes.

Exempt from further tax.

Sec. 4. (4285) Secured debts upon which said specific tax shall be paid, shall be exempt from further general taxes under the laws of this State.

Sec. 5. (4286) All acts or parts of acts in contravention of the provisions of this act are hereby repealed.

This act provides for the payment of a specific tax on any bond, note or debt secured by a mortgage on real property recorded in any state or country other than Michigan and not recorded in this state.

The person desiring to pay the tax must present the bond or note to the county treasurer, and the county treasurer must endorse on the bond or note the payment of the tax.

ACT 86 OF 1917.

Private forest reservations.

Sec. 1. Upon any tract of land not exceeding one hundred sixty acres, where at least one-half is improved and devoted to agricultural purposes in this State, there may be selected by the owner or owners thereof, as a private forest reservation, a portion thereof not exceeding one-fourth of the total area of said tract, upon filing with the treasurer of the county in which it is located a description of such forest reservation as is hereinafter provided.

When subject to act.

Sec. 2. If any land owner shall plant not less than twelve hundred trees on each acre of selected private forest reservation, then it shall become subject to this act as herein provided.

Idem.

Sec. 3. Upon any tract selected as a private forest reservation which is partially stocked with forest trees, the owner may plant a sufficient number of forest trees to assure a spacing of approximately six by six feet on the open areas, when the same shall become subject to this act as in section two.

Cattle, etc., when may pasture upon.

Sec. 4. No land owner shall receive the benefit of this act who shall permit cattle, horses, sheep, hogs or goats to pasture upon such reservation until at least ninety per cent of the trees are two inches in diameter, and then only under such rules and regulations as may be made by the State Board of Agriculture.

How maintained.

Sec. 5. The forest reservation shall at all times be kept fully stocked with forest trees under such rules and regulations as may be made from time to time by the State Board of Agriculture, and shall at all times be maintained as a woodlot.

Restocking.

Sec. 6. Whenever any trees are removed from such private forest reservation, provision shall be made for complete restocking with forest trees under such rules and regulations as may be made by the State Board of Agriculture.

What considered forest trees.

Sec. 7. The varieties of ash, hemlock, beech, maple, pine, oak, hickory, basswood, elm, locust, walnut, butternut, ironwood, cedar, larch, tuliptree, mulberry, osage orange, sassafras, catalpa and such other trees as the State Board of Agriculture may recommend shall be considered forest trees within the meaning of this act.

Record of reservations.

Sec. 8. It shall be the duty of the treasurer of each county to keep a record of all private forest reservations within such county as the same may be selected by the owner or owners thereof under this act; and said treasurer shall, on or before the first Monday in April in each year, certify to the supervisor or assessor of each township a description of the selected private forest reservations therein, and the name of the owner or owners thereof.

Sec. 9. It shall be the duty of the supervisor or assessor in each township to keep a record of all private forest reservations within his township as certified to him by the treasurer of said county, and he shall require the owner or his agent to subscribe under oath the extent and description of the land selected as private forest reservation and that the number of trees is as required by this act and that he will maintain the same according to the intent of this act. Idem.

Sec. 10. The said Board of Agriculture shall also prescribe the form of application and contract to be filed with the treasurer of the county wherein such application shall be made, and form of notice by treasurer to supervisor or other assessing officer. Application, form of.

Sec. 11. It shall be the duty of the supervisor or assessor to personally examine the various private reservations when the real estate is assessed for taxation, and to note upon his return, the condition of the trees, and that same are properly planted and continuously cared for, in order that the intent of this act may be complied with. If the said private reservation is properly planted and continuously cared for in accordance with the provisions of this act, such part of its value as is over and above one dollar per acre shall be exempt from all taxation: Provided, When any owner of a forest reservation provided for in this act shall desire to cut and harvest trees in said reservation, except for firewood or building material for the domestic use of said owner or his tenant, he shall notify the tax assessor of his district of his said intention and after such trees are cut, and before their removal from the land, the owner shall make an accurate measurement or count of all the trees cut, and file with the assessor a true and accurate return of such measurement or count and of the variety and value of the trees so cut. The assessor shall forthwith assess the stumpage value of the timber so cut and shall issue a license to remove said timber, which license shall be in effect upon payment to the collector of taxes of the district of a fee of five per cent of such appraised valuation. The assessor shall notify the clerk and the tax collector of his district of the issuance of such license. If any such timber is removed without payment of such license fee, it shall be the duty of the tax collector to levy upon such timber for collection of such license fee in the manner provided by law for collection of personal taxes. If the owner of any such forest reservation desires at any time to withdraw his land from such classification, or fails to comply with the provisions of this act, the tax assessor of his district shall estimate the cash value of the timber on the stump and the owner shall pay a fee of five per cent of

Supervisor, etc., to examine.

Proviso.

such appraised valuation; and, on his refusal or neglect to make such payment, the tax collector shall levy upon such timber for collection in such fee in the manner provided by law for the collection of personal taxes.

Sec. 12. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Note.--This act provides for private forest reserves and the exemption of same from taxation.

ACT 116 OF 1917.

Payment of state tax to counties.

Sec. 1. On the first day of December, nineteen hundred seventeen, and on the first day of December in each and every year thereafter, there shall be paid into the treasury of each county in this State in which may be located any State tax homestead or State swamp lands under the control and supervision of the Public Domain Commission, a tax of five cents per acre, or major portion thereof, of all such lands as shall belong to the State on the first day of December in each year, which tax shall be in lieu of all other taxes now levied against such State land under any existing law. The money so received by any county shall be placed in the general fund and shall be expended under the supervision of the board of supervisors of such county upon the trunk line highways within such county in the manner prescribed by law and in accordance with the suggestions of the State Highway Commissioner: Provided, however, That if no such trunk line highways are established within the county in which such State tax homestead or State swamp lands are located, then the tax provided by this act shall be expended upon the highways of such county under the supervision of the board of supervisors and in accordance with the suggestion of the State Highway Commissioner.

Expended on trunk line highways.

Proviso.

Duty of commission.

Sec. 2. The Public Domain Commission shall enter upon their records against each description of said lands the amounts provided by this act and shall certify the same to the Auditor General, who shall draw his warrant on the State Treasurer therefor, to be paid out of any moneys in the general fund not otherwise appropriated. Such amounts shall be forwarded by the Public Domain Commission to the county treasurers.

Section repealed.

Sec. 3. Section fifty-five of act number fifty-nine of the Public Acts of nineteen hundred fifteen, entitled "An act to provide for the construction and improvement of highways, to borrow money therefor, and the assessment and collection of taxes for the construction thereof, and to limit the sums of money to be paid by counties for highway purposes," is hereby repealed.

Note.—This act provides for the payment by the state of a tax of five cents an acre upon state lands to the county treasurer of the county in which the lands are located to be used for trunk line highways.

ACT NO. 133 OF 1917.

Primary school land, etc., sale of, for right of way.

Sec. 1. The public domain commission is hereby authorized and empowered to sell and dispose of any primary school, swamp, tax homestead or other lands held by the state subject to the control of the said public domain commission, in pieces or parcels of less than a legal subdivision, to any telephone, telegraph, transmission or power company or corporation, for a right of way over and across any such lands, and the board of agriculture is also hereby authorized to sell or dispose of any agricultural college lands not included within the forest reserve in the counties of Alcona and Iosco, in pieces or parcels of less than a legal subdivision, to any telephone, telegraph, transmission or power company for a right of way over and across any such agricultural college lands. Any of such lands shall not be sold or disposed of for any right of way for less than twice the appraised value per acre of such lands at the time of the withdrawal of such lands from sale.

Minimum sale price.

NOTE.—The act provides for the sale by the Public Domain Commission or the Board of Agriculture of the right of way across state lands to telephone, telegraph, power and railroad companies.

ACT NO. 74 OF 1923.

Certain taxes cancelled.

Section 1. The auditor general is hereby authorized to cancel the taxes of the years eighteen hundred eighty-five and eighteen hundred eighty-six upon all descriptions of land on which the taxes remain unpaid as shown by the records in his office. Such cancellation when made shall operate to extinguish the lien of the state and any municipality thereof for the taxes of such years. Upon the cancellation of the amount of such tax, the state, county, township, city or village shall stand the loss of their portion of such tax.

Certain deeds prima facie evidence of title.

Sec. 1. (4160) All deeds heretofore or hereafter made upon sale of land reserved and withheld from entry under the homestead right in pursuance of section one hundred thirty-one of act two hundred six of the public acts of eighteen hundred ninety-three, and acts amendatory thereto shall be prima facie evidence of title in fee in the grantee named in such deeds of the land described therein.

All deeds issued by the state land commission upon sale of tax homestead lands convey an absolute title.—Chido v. Williams, 180 M. 367.

When state title deemed absolute.

Sec. 1. (4161) After the expiration of six months from and after the time when any deed made to the state under the provisions of section one hundred twenty-seven of act two hundred six of the public acts of eighteen hundred ninety-three, being the general tax law, and acts amendatory thereto, shall have been recorded in the office of the register of deeds for the county in which the land so deeded shall be situated, the title of the state in and to the same shall be deemed to be absolute and complete, and no suit or proceeding shall thereafter be instituted by any person claiming through the original or government title to set aside, vacate or annul the said deed or the title derived thereunder: Provided, That as to all lands heretofore deeded to the state under the provisions of said section one hundred twenty-seven of said act two hundred six of the public acts of eighteen hundred ninety-three, the title of the state thereto shall be deemed to be absolute and complete after a period of six months from the taking effect of this act, and no suit or proceeding shall thereafter be instituted by any person claiming through the original or government title to set aside, vacate or annul said deed or deeds or the title derived thereunder.

Proviso.

This section is constitutional and valid in limiting the time to six months in which to institute proceedings to vacate or annul any tax homestead deed.—Beuthien v. Dillon, 160 M. 396; Chido v. Williams, 180 M. 367; Darrow v. Minneapolis, St. Paul and Sault Ste. Marie R. R. Co., 188 M. 664.

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